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Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7395 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Bayuk Cigars Inc.

Subpart—Discriminating in price under section 2, Clayton Act, as amended—Payment for services or facilities for processing or sale under 2(d): § 13.824 Advertising expenses.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 38 Stat. 730, as amended; 15 U.S.C. 13) [Cease and desist order, Bayuk Cigars Incorporated, Philadelphia, Pa., Docket 7395, August 27, 1959]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a well-known cigar manufacturer—with principal office in Philadelphia and branch offices, factories, and warehouses in a number of States, and having net sales in 1957 exceeding \$37,000,000—with violating section 2(d) of the Clayton Act by such practices as participating in a cooperative advertising plan with certain favored retail customers whereby it paid their full advertising costs in promoting its cigars; by making special display promotional payments to certain retailers; and by paying a certain chain customer \$700 per month as consideration for advertising its cigars on book matches distributed to retail outlets, while not offering any of such payments to competitors of the favored recipients.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 27 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Bayuk Cigars Incorporated, a corporation, its officers, employees, agents and representatives, directly or through any cor-

porate or other device, in connection with the distribution, sale, or offering for sale of cigars in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

1. Paying, or contracting to pay or allow, anything of value to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer as an agreed percentage or proportion of dollar volume of purchases by such customer, different from the agreed percentage or proportion granted in any other customer where both such customers compete in fact in the resale of respondent's products and where such payments are based on the amount of purchases made.

2. Paying, contracting to pay, or furnishing anything of value, such as lump sum payments arrived at by negotiation with individual customers to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer on terms not available to, or not proportionally equal for, all other customers competing in fact with such customer in the resale of respondent's products.

3. Paying or contracting to pay to any customer, directly or indirectly through a subsidiary or otherwise, anything of value which is above the market price for advertising on book matches, unless such payment or consideration, or something in lieu thereof, is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in fact in the distribution of respondent's products.

4. Paying, or contracting to pay or allow, anything of value to, or for the benefit of, a customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of any products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to

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The following semiannual cumulative pocket supplement is now available:

Title 46, Parts 146-149,
1959 Supplement 1 (\$1.25)

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all other customers competing in fact in the distribution of such products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: August 27, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8491; Filed, Oct. 8, 1959;
8:46 a.m.]

[Docket 7329 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Continental Manufacturing Corp.
et al.

Subpart—*Advertising falsely or misleadingly*: § 13.15 *Business status, advantages, or connections*: Location; plant and equipment; producer status of dealer or seller: *Manufacturer*; § 13.70 *Fictitious or misleading guarantees*; § 13.170 *Qualities or properties of product or service*. Subpart—*Furnishing means and instrumentalities of misrepresentation or deception*: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Continental Manufacturing Corporation et al., Culver City, Calif., Docket 7329, August 28, 1959]

In the Matter of Continental Manufacturing Corporation, a Corporation, and Frank E. Williams, and Ralph G. Shroyer, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging distributors of "Life Time" batteries in Culver City, Calif., with representing falsely—in advertising in magazines, folders, etc., of nation-wide circulation and in advertising material furnished their dealers—that their said batteries were self-charging; carried a bonded six-year guarantee and a money-back guarantee unlimited

as to time and were guaranteed for 50,000 miles of use; and that they manufactured the batteries and owned factories in Chicago, Scranton and Reading, Pa., and Des Moines, Iowa.

On the basis of a consent agreement, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Continental Manufacturing Corporation, a corporation, and its officers and Frank E. Williams, individually and as an officer of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, in commerce, of their electric storage battery, spark plug and oil filter known as "Life Time" battery, "Life Time" spark plug and "Life Time" oil filter, or any other battery, spark plug or oil filter of the same or substantially the same composition or type, or possessing substantially similar properties, functions or characteristics, whether sold under the same or any other name, or in connection with the sale of any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That their battery is self charging;

(b) That any product is guaranteed in any respect unless the terms and conditions of the guarantee are clearly and conspicuously disclosed in connection therewith, and unless respondents in fact comply with the represented guarantee;

(c) That they manufacture all of the products sold by them; or that they manufacture any of such products, which in fact they purchase from the manufacturer thereof;

(d) That they own or maintain an office, factory, or warehouse in any city other than that in which an office, factory, or warehouse is in fact maintained, occupied, and used by respondents.

It is further ordered, That the complaint herein be dismissed as to respondent Ralph G. Shroyer.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Continental Manufacturing Corporation, a corporation, and Frank E. Williams, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8492; Filed, Oct. 8, 1959;
8:46 a.m.]

[Docket 7258]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Stevens Furs, Inc., et al.

Subpart—*Invoicing products falsely*: § 13.1108 *Invoicing products falsely*: Fur Products Labeling Act. Subpart—*Misbranding or mislabeling*: § 13.1212 *Formal regulatory and statutory requirements*: Fur Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure*: § 13.1845 *Composition*: Fur Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements*: Fur Products Labeling Act; § 13.1865 *Manufacture or preparation*: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Stevens Furs, Inc., et al., New York, N.Y., Docket 7258, August 27, 1959]

In the Matter of Stevens Furs, Inc., a Corporation, and Harry Silverman and Edward Jenkins, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a New York City furrier with violating the Fur Products Labeling Act by failing to comply with the labeling and invoicing requirements.

After the usual trial of the issues, the hearing examiner made his initial decision and order to cease and desist which, after modification by the Commission, was on August 27 adopted as the decision of the Commission.

The order to cease and desist, as thus modified, is as follows:

It is ordered, That Stevens Furs, Inc., a corporation, and Harry Silverman and Edward Jenkins, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels thereto showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act;

2. Failing to affix labels thereto showing the item numbers or marks assigned to such fur products;

3. Setting forth on labels affixed thereto information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder which is mingled with non-required information;

4. Setting forth on labels affixed thereto information required under sec-

tion 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder which is in handwriting.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of such fur products invoices showing all of the information required to be disclosed by each of the subsections of section 5(b) (1) of the Fur Products Labeling Act;

2. Failing to furnish to purchasers of such products invoices showing the item numbers or marks assigned to said fur products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents, Stevens Furs, Inc., a corporation, and Harry Silverman and Edward Jenkins, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

Issued: August 27, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8493; Filed, Oct. 8, 1959;
8:47 a.m.]

[Docket 7486 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Lawrence C. Wilson et al.

Subpart—*Advertising falsely or misleadingly*: § 13.60 *Earnings and profits*; § 13.115 *Jobs and employment service*; § 13.125 *Limited offers or supply*. Subpart—*Misrepresenting oneself and goods*—Goods: § 13.1615 *Earnings and profits*; § 13.1663 *Individual's special selection or situation*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Lawrence C. Wilson doing business as Midwest Real Estate Appraisal Training Service et al., Denver, Colo., Docket 7486, August 28, 1959]

In the Matter of Lawrence C. Wilson, an Individual Doing Business as Midwest Real Estate Appraisal Training Service, and C. L. Spears, an Individual

This proceeding was heard by a hearing examiner on the complaint of the Commission charging Denver, Colo., sellers of a correspondence course in real estate appraisal with representing falsely, in advertisements inserted in newspapers to obtain leads to prospective students and by statements of salesmen to persons so contacted, that those completing the course would be offered employment or assisted in securing employment as real estate appraisers,

and at substantial salaries; that persons accepted for enrollment must have special qualifications; and that only a limited number would be accepted.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Lawrence C. Wilson, an individual trading and doing business as Midwest Real Estate Appraisal Training Service, or under any other trade name, and C. L. Spears, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of courses of study and instruction including a course of study and instruction in real estate appraisal, or the supplies and equipment used in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That persons completing said course of study and instruction in real estate appraisal will be offered employment or will be assisted by respondents to secure employment as real estate appraisers; or that persons completing any of said courses of study and instruction will be employed or assisted to secure employment in any occupation unless such is the fact;

2. That persons completing said course of study and instruction in real estate appraisal will be employed or will be assisted by respondents to secure employment as real estate appraisers at salaries from \$325.00 to \$450.00 per month; or that persons completing any of said courses of study and instruction will be employed or will be assisted to secure employment at wages or other compensation greater than will be in fact paid to such persons;

3. That persons accepted for enrollment in said course of study and instruction in real estate appraisal must have special qualifications; or that persons accepted for enrollment in any of said courses of study and instruction must have qualifications more extensive than are in fact required;

4. That the number of persons accepted for enrollment in said course of study and instruction in real estate appraisal is limited or restricted; or that enrollment in any of said courses is limited or restricted to any degree greater than is the fact.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents named in the caption hereof shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and

form in which they have complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8494; Filed, Oct. 8, 1959;
8:47 a.m.]

[Docket 7483 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Bernard Morris and Morris Moulded Shoe Co.

Subpart—*Advertising falsely or misleadingly*: § 13.15 *Business status, advantages, or connections*: Producer status of dealer or seller: *Manufacturer*; § 13.170 *Qualities or properties of product or service*. Subpart—*Using misleading name*—Vendor: § 13.2445 *Producer or laboratory status of dealer or seller*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Bernard Morris doing business as Morris Moulded Shoe Co., New York, N.Y., Docket 7483, August 28, 1959]

In the Matter of Bernard Morris, an Individual Doing Business as Morris Moulded Shoe Co.

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a New York City distributor with representing falsely in advertising that his moulded shoes would relieve discomforts of arthritis and rheumatism, corns, callouses, bunions, hammertoes, fatigue, long hours of standing, etc.; and would insure correct support and body balance, eliminate fatigue, and revitalize foot and leg muscles; and with using the word "Manufacturers" in connection with his trade name when he manufactured only a few, if any, of the shoes he sold.

After acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Bernard Morris, an individual doing business as Morris Moulded Shoe Co., or under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of shoes designated as "Morris Moulded Shoes", or any other shoe of similar construction irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by the United States mails or by any means in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, any advertisement which represents directly, indirectly or by implication:

(a) That the wearing of respondent's shoes will relieve the discomfort of arthritis or rheumatism; or will relieve the discomfort of corns, callouses, bunions, hammered toes, arch conditions, excess fatigue, crippled or deformed feet, or of people who must stand or walk for long hours at a time, unless expressly and clearly limited to the relief of the discomfort of such conditions when caused by ill-fitting shoes.

(b) That the wearing of said shoes will insure correct support or body balance.

(c) That the wearing of said shoes will revitalize foot or leg muscles; or will eliminate fatigue, unless expressly and clearly limited to fatigue that may result from ill-fitting shoes.

(d) Through the use of the word "Manufacturers" or any other word or words of similar import, or in any other manner, that respondent manufactures the shoes sold by him, provided, however, that this shall not prohibit him from representing that certain of the shoes sold by him are manufactured by him when such is the fact.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said shoes, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8495; Filed, Oct. 8, 1959; 8:47 a.m.]

[Docket 7142 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Automotive Supply Co. et al.

Subpart—Coercing and intimidating: § 13.370 Suppliers and sellers: To grant unlawful price discriminations. Subpart—Discriminating in price under section 2, Clayton Act, as amended—knowingly inducing or receiving discriminating price under 2(f): § 13.350 Inducing and receiving discriminations.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 2, 38 Stat. 730, as amended; 15 U.S.C. 13) [Cease and desist order, Auto-

motive Supply Company, etc., Altoona, Pa., Docket 7142, August 29, 1959]

In the Matter of Automotive Supply Company, a Corporation, Doing Business Under Its Own Name; and Also Doing Business as Central Warehouse Company, and as Complete Auto and Home Supply Company, Division of Automotive Supply Company

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a wholesaler with main office in Altoona, Pa., and some 16 branches in Pennsylvania, West Virginia, and Arizona—an important outlet of tires and tubes, automotive products, household appliances, and home and garden and recreation supplies, with annual sales approximating \$16,000,000—with violating section 2(f) of the Clayton Act by exerting the influence of its strong buying power on suppliers and demanding and receiving from them, special and substantial rebates, allowances, commissions, and other forms of substantial price reductions—ostensibly as warehousing and distribution services—not offered or granted by said suppliers to its competitors, and replacing suppliers not acceding to such demands by others who could be induced to grant the price concessions demanded.

Based on an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 29 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent, Automotive Supply Company, a corporation, and its officers, representatives, agents and employees, directly or through Central Warehouse Company or Complete Auto and Home Supply Company, Division of Automotive Supply Company, or through any corporate or other device, in or in connection with the offering to purchase or purchase of tires and tubes and related items, and other automotive products and supplies in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Knowingly inducing, receiving or accepting any discrimination in the price of such products and supplies by directly or indirectly inducing, receiving or accepting from any seller a net price which respondent knew or should have known to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where respondent is competing with other customers of the seller.

For the purpose of determining "net price" as used in this order, there shall be taken into account rebates, allowances, commissions, discounts, terms and conditions of sale, or other forms of direct or indirect price reductions, by which net prices are effected.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after

service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8496; Filed, Oct. 8, 1959; 8:47 a.m.]

[Docket 7430 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

I. N. Agrons and I. N. Agrons Furs

Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1212 Formal regulatory and statutory requirements: Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, I. N. Agrons Furs, Atlantic City, N.J., Docket 7430, August 29, 1959]

In the Matter of I. N. Agrons, Individually and Trading as I. N. Agrons Furs

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in Atlantic City, N.J., with violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

After acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 29 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent I. N. Agrons, individually and trading as I. N. Agrons Furs, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, offering for sale, transportation, or distribution in commerce, of fur products, or in connection with the sale, manufacture for sale, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur", and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively labeling or otherwise identifying any such product as "natural", or in terms or words of similar import, when, in truth and in

fact, the product is bleached, dyed, or otherwise artificially colored.

B. Misbranding fur products by: 1. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the sub-sections of section 4(2) of the Fur Products Labeling Act;

2. Setting forth on labels affixed to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder:

- (a) In abbreviated form;
- (b) Mingled with non-required information;
- (c) In handwriting.

C. Falsely or deceptively invoicing fur products by: 1. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the sub-sections of section 5(b) (1) of the Fur Products Labeling Act;

2. Setting forth information required under section 5(b) (1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

3. Failing to set forth the term "Broadtail-processed Lamb", in the manner required.

4. Failing to set forth an item number or mark assigned to a fur product.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8497; Filed, Oct. 8, 1959;
8:47 a.m.]

[Docket 7460 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Joy Hat Novelty Corp. et al.

Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception*. Subpart—Misbranding or mislabeling: § 13.1190 *Composition*: Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements*: Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements*: Wool Products Labeling Act; § 13.1880 *Old, used, reclaimed, or reused as unused or new*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended,

secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68-68(c)) [Cease and desist order, Joy Hat Novelty Corp. et al., New York, New York, Docket 7460, August 29, 1959]

In the Matter of Joy Hat Novelty Corporation, a Corporation, and Stanley Fessel and Daniel Silverman, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging manufacturers in New York City with selling hats to wholesalers, jobbers, and retailers for resale without disclosing in any manner that such products were discarded, secondhand, and previously used felt hat bodies which they had cleaned, shaped, and fitted with new trimmings; and with violating the Wool Products Labeling Act by labeling as "100% New Felt", hats which contained a substantial quantity of reclaimed woolen fibers, and by failing in other respects to comply with the labeling requirements of the Act.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 29 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Respondents Joy Hat Novelty Corporation, a corporation, and its officers, and Stanley Fessel, individually and as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of hats, do forthwith cease and desist from:

A. Offering for sale, selling or distributing discarded, secondhand or previously used hats that have been reconditioned, or hats that are composed in whole or in part of materials which are used, unless a statement that said hats are composed of secondhand or used materials is stamped in some conspicuous place on the exposed surface of the inside of the hat in conspicuous and legible terms which cannot be obliterated without mutilating the hat itself, provided that if sweat bands or bands similar thereto are attached to said hats, then such statement may be stamped upon the exposed surface of such bands, providing that said stampings be of such a nature that they cannot be removed or obliterated without mutilating the band and the band itself cannot be removed without rendering the hat unserviceable;

B. Representing in any manner that hats made in whole or in part from old, used, or secondhand materials are new or are composed of new materials.

It is further ordered, That Respondents Joy Hat Novelty Corporation, a corporation, and its officers, and Stanley Fessel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduc-

tion into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of woolen hats or other wool products, as "wool products" are defined in the Wool Products Labeling Act, do forthwith cease and desist from:

C. Misbranding such products by: 1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to affix securely on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of the total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product, of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment of such wool product in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Daniel Silverman.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That Respondents Joy Hat Novelty Corporation, a corporation, and Stanley Fessel, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL] JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8498; Filed, Oct. 8, 1959;
8:48 a.m.]

[Docket 7404 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Homemaker Rugs, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition*. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Homemaker Rugs, Inc., et al., New York, N.Y., Docket 7404, August 28, 1959]

In the Matter of Homemaker Rugs, Inc., a Corporation, and Bernard G. Blum and Molly Blum, Individually and as Officers of Said Corporation, and as Copartners Trading as B. G. Blum Associates

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a distributor in New York City with representing falsely—by such practices as use on attached labels of the terms "The Woollette", "The Wool-O-Way", etc.—that rugs which contained a substantial quantity of "reprocessed" wool were composed entirely of "wool"; and with selling rugs composed in part of rayon without clearly disclosing the rayon content.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Homemaker Rugs, Inc., a corporation, and its officers, and Bernard G. Blum and Molly Blum, individually and as officers of said corporation, and trading under the name of B. G. Blum Associates, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of carpets and floor coverings, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting the fiber content of their merchandise;
2. Using the word "wool", or any word or term indicative of wool, to designate or describe any product or portion thereof which has been reclaimed from any woven or felted product, provided, however, that nothing herein shall prohibit the use of the term "reprocessed wool" when the product, or those portions thereof referred to, have been reclaimed from woven or felted products;
3. Failing to clearly set forth the rayon content of merchandise composed in whole or in part of rayon on invoices and labels and in the advertising of such merchandise.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Homemaker Rugs, Inc., a corporation, and Bernard G. Blum and Molly Blum, individually and as officers of said corporation, and as copartners trading as B. G. Blum Associates, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have

complied with the order to cease and desist.

Issued: August 31, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8499; Filed, Oct. 8, 1959; 8:48 a.m.]

[Docket 7425 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Irving Lebo & Son, Inc., et al.

Subpart—*Advertising falsely or misleadingly*: § 13.155 *Prices*: Exaggerated as regular and customary. Subpart—*Invoicing products falsely*: § 13.1108 *Invoicing products falsely*: Fur Products Labeling Act. Subpart—*Misrepresenting oneself and goods*—Prices: § 13.1805 *Exaggerated as regular and customary*. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure*: § 13.1852 *Formal regulatory and statutory requirements*: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Irving Lebo & Son, Inc., et al., New York, N.Y., Docket 7425, Aug. 28, 1959]

In the Matter of Irving Lebo & Son, Inc., a Corporation, and Irving Lebo, Stanley Lebo, and Harvey Lebo, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging New York City furriers with violating the Fur Products Labeling Act by failing to furnish to purchasers an invoice showing the information required to be disclosed; by representing on invoices and in advertisements prices of fur products as reduced from regular prices which were in fact fictitious; and failing to keep adequate records as a basis for such pricing claims.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Irving Lebo & Son, Inc., a corporation, and Irving Lebo, Stanley Lebo, and Harvey Lebo, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, and manufacture for introduction, into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation, or distribution of fur products which are made

in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which:

A. Represents, directly or by implication, in advertisements, that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

3. Making price claims and representations of the type referred to in Paragraph 2A above, unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8500; Filed, Oct. 8, 1959; 8:48 a.m.]

[Docket 7444 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

H. W. Given Co. and H. Woody Given, Jr.

Subpart—*Advertising falsely or misleadingly*: § 13.30 *Composition of goods*: Oleomargarine amendment to FTC Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; sec. 12, 52 Stat. 114; sec. 15, 64 Stat. 20-21; 15 U.S.C. secs. 45, 52, 55) [Order to cease and desist, H. W. Given Company et al., Ardmore, Pa., Docket 7444, August 28, 1959]

In the Matter of H. W. Given Company, a Corporation, and H. Woody Given, Jr., Individually and as an Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging sellers in Ardmore, Pa., with advertising their "Table King" margarine in such terms as to represent or suggest that the oleomargarine was a dairy product.

After acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 28 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents H. W. Given Company, a corporation, and its officers, and H. Woody Given, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound, or any combination thereof, which represents or suggests that said product is a dairy product;

2. Disseminating, or causing to be disseminated, as described in Paragraph 1 of this order, any advertisement in which the word or words "milk", "churn", "dairy formula", are used, except as a part of a truthful, accurate and full statement of all the ingredients contained in said product;

3. Disseminating, or causing to be disseminated, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, any advertisement which contains any of the representations prohibited in paragraphs 1 and 2 of this order.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 28, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8501; Filed, Oct. 8, 1959; 8:48 a.m.]

[Docket 7445 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Fieldcrest Mills, Inc., and Karastan Rug Mills, Inc.

Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1056 Preticketing merchandise misleadingly. Subpart—Misbranding or mislabeling: § 13.1323 Size or weight. Subpart—Misrepresenting oneself and goods—Goods: § 13.1743 Size or weight.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Fieldcrest Mills, Inc. (Spray, N.C.), trading as Karastan Rug Mills, Inc. (New York, N.Y.), Docket 7445, August 26, 1959]

In the Matter of Fieldcrest Mills, Inc., a Corporation, Trading as Karastan Rug Mills, Inc.

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a manufacturer in Spray, N.C., with attaching to its rugs, labels giving an "aprox" size which was larger than was the fact, and thus placing in the hands of retailers means for misleading the public as to the actual size.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 26 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Respondent Fieldcrest Mills, Inc., a corporation, trading as Karastan Rug Mills, Inc., or under any other name, and Respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the manufacture, offering for sale, sale or distribution of rugs or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, the size of their said rugs or other merchandise to be of larger dimensions than is the fact.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That Respondent Fieldcrest Mills, Inc., a corporation, trading as Karastan Rug Mills, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: August 26, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8502; Filed, Oct. 8, 1959; 8:48 a.m.]

[Docket 7074 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Howard Stores Corp.

Subpart—Advertising falsely or misleadingly: § 13.155 Prices: Exaggerated as regular and customary; fictitious marking. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805 Exaggerated as regular and customary; § 13.1810 Fictitious marking.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Howard Stores Corporation, Brooklyn, N.Y., Docket 7074, August 26, 1959]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a corporate operator of numerous retail clothing stores in various States which sold men's and boys' clothing, shoes, and haberdashery, with representing falsely in advertising in newspapers, by such phrases as "\$60 Values", "\$70 Values", and "Usually \$70.00", that such figures were the regular retail prices for the merchandise so advertised.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 26 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Howard Stores Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication: 1. That certain prices are the regular and customary prices charged by respondent for certain merchandise when such prices are in excess of the prices for which it has regularly and customarily sold such merchandise.

2. That respondent has reduced its prices when the prices it is charging are its regular and customary prices.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondent's merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondent in the normal course of its business.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form

in which it has complied with the order to cease and desist.

Issued: August 26, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8503; Filed, Oct. 8, 1959;
8:48 a.m.]

[Docket 7402 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Winston Garment, Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1190 Composition: Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements: Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Winston Garment, Inc., et al., New York, N.Y., Docket 7402, August 26, 1959]

In the Matter of Winston Garment, Inc., and Miles Rose, Thomas Brennan and George Ahrens, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging furriers in New York City with violating the Fur Products Labeling Act by falsely labeling certain fur products with respect to the names of animals producing the fur, and by failing in other respects to comply with labeling and invoicing requirements.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on August 26 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Winston Garment, Inc., a corporation, and its officers, and Miles Rose, Thomas Brennan and George Ahrens, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution, in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act;

B. Failing to set forth on the required labels the item number or mark assigned to a fur product;

C. Setting forth on labels affixed to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and the regulations promulgated thereunder in abbreviated form;

D. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

3. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act;

B. Failing to set forth on the required invoices the item number or mark assigned to a fur product;

C. Setting forth information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Winston Garment, Inc., and Miles Rose, Thomas Brennan and George Ahrens, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: August 26, 1959.

By the Commission.

[SEAL]

JOHN R. HEIM,
Acting Secretary.

[F.R. Doc. 59-8504; Filed, Oct. 8, 1959;
8:48 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 729—PEANUTS

Determination of County Normal Yield for 1959 Crop

Basis and purpose. The purpose of this document is to establish county nor-

mal yields for the 1959 peanut crop, which yields have been determined by State committees pursuant to and under the standards specified in § 729.1020(a) of the Allotment and Marketing Quota Regulations for Peanuts of the 1959 and Subsequent Crops (23 F.R. 8515; 24 F.R. 2677, 6803). County normal yields are used in some cases under the said regulations (§§ 729.1020(b), 729.1022, 729.1052) to determine the amount of penalty on peanuts marketed from a farm and as the 1959 crop of peanuts is now being marketed it is essential that county normal yields for the 1959 crop be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice, public procedure and effective date requirements of the Administrative Procedure Act (5 U.S.C. 1001-1011) is impractical and contrary to the public interest and the county normal yields specified below shall become effective upon filing of this document with the Director, Division of the Federal Register.

County normal yields for the 1959 peanut crop are as follows:

ALABAMA

County	Normal yield (pounds)	County	Normal yield (pounds)
Autauga	853	Houston	1,091
Baldwin	847	Jackson	702
Barbour	882	Jefferson	655
Bibb	625	Lamar	581
Blount	730	Lauderdale	650
Bullock	673	Lawrence	637
Butler	755	Lee	686
Calhoun	729	Limestone	602
Chambers	685	Lowndes	533
Cherokee	664	Macon	629
Chilton	633	Madison	552
Choctaw	601	Marengo	507
Clarke	613	Marion	591
Clay	713	Marshall	638
Cleburne	622	Mobile	873
Coffee	1,080	Monroe	878
Colbert	665	Montgomery	650
Conecuh	808	Morgan	642
Coosa	691	Perry	546
Covington	1,011	Pickens	538
Crenshaw	928	Pike	875
Cullman	684	Randolph	653
Dale	1,005	Russell	704
Dallas	597	Saint Clair	662
De Kalb	706	Shelby	660
Elmore	647	Sumter	591
Escambia	961	Talladega	678
Etowah	684	Tallapoosa	711
Fayette	656	Tuscaloosa	541
Franklin	600	Walker	621
Geneva	1,205	Washington	732
Greene	499	Wilcox	685
Hale	548	Winston	665
Henry	1,004		

ARIZONA

Pima	2,050	Yuma	1,155
Pinal	790		

ARKANSAS

Cleburne	379	Howard	324
Craighead	487	Johnson	726
Crawford	517	Lafayette	347
Dallas	434	Little River	370
Faulkner	421	Logan	533
Franklin	598	Nevada	634
Hempstead	551	Stone	386
Hot Spring	605	Yell	674

CALIFORNIA

Fresno	1,109	Madera	600
Imperial	963	Riverside	736
Kern	889	Tulare	940

RULES AND REGULATIONS

FLORIDA

County	Normal yield (pounds)	County	Normal yield (pounds)
Alachua	1,047	Lake	1,030
Baker	821	Leon	519
Bay	851	Levy	946
Bradford	1,008	Madison	610
Calhoun	1,267	Marion	1,082
Columbia	837	Okaloosa	1,198
Dixie	913	Palm Beach	1,955
Escambia	767	Putnam	691
Gadsden	957	Santa Rosa	1,144
Gilchrist	828	Sumter	910
Hamilton	725	Suwannee	1,068
Hendry	1,075	Taylor	486
Hillsborough	671	Union	794
Holmes	930	Wakulla	802
Jackson	955	Walton	1,038
Jefferson	777	Washington	1,011
Lafayette	867		

GEORGIA

Appling	967	Laurens	792
Atkinson	1,196	Lee	971
Bacon	1,269	Lowndes	849
Baker	1,037	McDuffie	551
Baldwin	369	Macon	755
Ben Hill	1,018	Marion	735
Berrien	1,011	Miller	1,169
Bibb	656	Mitchell	1,102
Bleckley	844	Montgomery	802
Brooks	939	Muscogee	455
Bryan	907	Newton	854
Bulloch	1,000	Peach	877
Burke	655	Pierce	797
Calhoun	1,087	Pulaski	879
Candler	807	Quitman	868
Chattahoochee	564	Randolph	973
Clay	1,003	Richmond	549
Coffee	975	Schley	891
Colquitt	1,058	Screven	820
Columbia	446	Seminole	1,224
Cook	1,207	Stewart	808
Crawford	580	Sumter	985
Crisp	1,294	Talbot	618
Dade	560	Tattnall	1,099
Decatur	1,064	Taylor	916
Dodge	832	Telfair	947
Dooly	971	Terrell	1,028
Dougherty	886	Thomas	827
Early	1,046	Tift	1,128
Effingham	965	Toombs	995
Emanuel	940	Treutlen	429
Evans	952	Turner	1,140
Glascok	484	Twiggs	690
Grady	1,002	Upson	673
Hancock	315	Warren	494
Harris	411	Washington	521
Houston	825	Wayne	952
Irwin	1,233	Webster	960
Jeff Davis	1,017	Wheeler	954
Jefferson	597	Wilcox	1,023
Jenkins	825	Wilkinson	748
Johnson	586	Worth	1,051
Lanier	1,045		

LOUISIANA

Beauregard	657	La Salle	555
Bienville	560	Lincoln	843
Claiborne	598	Morehouse	790
Grant	695	Union	534

MISSISSIPPI

Alcorn	366	Lowndes	330
Calhoun	314	Marshall	316
Chickasaw	330	Neshoba	330
Copiah	458	Newton	330
Covington	402	Noxubee	330
George	402	Prentiss	366
Greene	402	Smith	402
Hinds	458	Tippah	366
Holmes	316	Tishomingo	366
Kemper	330	Union	315
Lamar	402	Webster	316
Lauderdale	402	Winston	330
Lincoln	458	Yalobusha	314

MISSOURI

Bates	850	Ozark	740
Cole	600		

NEW MEXICO

County	Normal yield (pounds)	County	Normal yield (pounds)
Curry	1,265	Quay	922
Lea	1,032	Roosevelt	1,507

NORTH CAROLINA

Beaufort	1,296	Montgomery	733
Bertie	1,612	Moore	1,416
Bladen	1,164	Nash	1,654
Brunswick	1,119	North Hanover	704
Camden	1,614	Northampton	1,794
Catawba	802	Onslow	1,085
Chowan	1,973	Pamlico	931
Columbus	1,265	Pasquotank	1,629
Craven	932	Pender	1,089
Cumberland	1,252	Perquimans	1,950
Currituck	1,473	Pitt	1,445
Davidson	830	Richmond	1,047
Duplin	1,374	Robeson	1,199
Edgecombe	1,407	Rowan	887
Franklin	1,067	Rutherford	712
Gates	1,981	Sampson	1,142
Greene	1,169	Scotland	1,074
Halifax	1,746	Tyrrell	1,606
Hertford	1,951	Wake	1,733
Iredell	657	Warren	676
Johnston	1,401	Washington	1,734
Jones	927	Wayne	1,258
Lenoir	1,009	Wilson	1,207
Martin	1,699		

OKLAHOMA

Atoka	629	Lincoln	695
Beckham	1,536	Logan	1,058
Blaine	2,534	Love	572
Bryan	641	McClain	1,040
Caddo	1,576	McCurtain	706
Canadian	995	McIntosh	837
Carter	492	Marshall	702
Choctaw	677	Murray	698
Cleveland	750	Muskogee	976
Coal	639	Okfuskee	682
Comanche	969	Oklahoma	597
Cotton	850	Okmulgee	698
Creek	632	Osage	925
Custer	1,760	Pawnee	741
Dewey	900	Payne	762
Garvin	1,042	Pittsburg	826
Grady	766	Pontotoc	741
Greer	1,436	Pottawatomie	1,117
Harmon	683	Pushmataha	737
Haskell	666	Seminole	730
Hughes	849	Sequoyah	700
Jackson	908	Stephens	969
Jefferson	556	Tulsa	983
Johnston	605	Wagoner	975
Le Flore	635	Washita	1,785

SOUTH CAROLINA

Aiken	513	Horry	845
Allendale	797	Kershaw	860
Bamberg	817	Lee	1,188
Barnwell	779	Lexington	582
Clarendon	1,091	Marion	991
Colleton	703	Marlboro	719
Darlington	821	Orangeburg	540
Dillon	1,251	Richland	486
Dorchester	676	Spartanburg	527
Florence	1,071	Sumter	1,179
Greenville	482	Williamsburg	600
Hampton	870		

TENNESSEE

Benton	903	Hardeman	669
Bradley	1,143	Hardin	650
Carroll	911	Haywood	505
Chester	860	Henderson	1,637
Coffee	800	Hickman	673
Cumberland	590	Humphreys	663
Decatur	811	Lawrence	608
Dickson	585	Lewis	982
Fayette	873	Loudon	803
Gibson	943	Madison	400
Hamilton	943	Meigs	171

TENNESSEE—Continued

County	Normal yield (pounds)	County	Normal yield (pounds)
Monroe	605	Polk	941
Obion	566	Wayne	1,125
Perry	757	Weakley	850

TEXAS

Anderson	788	Jim Wells	630
Atascosa	574	Johnson	698
Austin	1,113	Jones	410
Bailey	1,593	Karnes	440
Bastrop	696	Kent	467
Baylor	575	Kimble	504
Bee	266	Lamar	849
Bexar	415	Lampasas	559
Bosque	549	La Salle	461
Bowie	1,004	Lavaca	730
Brazos	534	Lee	728
Briscoe	544	Leon	961
Brown	507	Limestone	801
Burleson	531	Live Oak	408
Burnet	624	Llano	440
Caldwell	843	McCulloch	506
Callahan	424	McLennan	747
Camp	880	McMullen	410
Cass	789	Madison	731
Cherokee	772	Marion	851
Clay	345	Mason	595
Coke	502	Medina	491
Coleman	370	Menard	418
Collingsworth	456	Milan	705
Colorado	925	Mills	529
Comanche	652	Montague	553
Cooke	442	Montgomery	704
Coryell	660	Morris	805
Crosby	1,017	Motley	657
Dallas	392	Nacogdoches	814
Denton	524	Palo Pinto	635
De Witt	624	Panola	320
Dimmit	786	Parker	620
Duval	429	Parmer	2,220
Eastland	518	Pecos	898
Erath	546	Polk	624
Falls	824	Rains	784
Fannin	744	Red River	365
Fayette	589	Robertson	756
Floyd	1,928	Runnels	330
Fort Bend	886	Rusk	822
Franklin	810	San Saba	509
Freestone	802	Smith	514
Frio	942	Somervell	655
Gaines	831	Stephens	485
Garza	492	Stonewall	487
Gillespie	369	Tarrant	483
Goliad	298	Terry	1,099
Gonzales	583	Titus	833
Grayson	547	Travis	458
Grimes	790	Trinity	588
Guadalupe	400	Tyler	585
Hale	1,724	Upshur	634
Hall	628	Van Zandt	902
Hamilton	371	Victoria	558
Harris	1,122	Walker	1,423
Harrison	838	Waller	1,085
Henderson	993	Washington	598
Hidalgo	344	Williamson	946
Hill	623	Wilson	482
Hood	648	Wise	873
Hopkins	917	Wood	976
Houston	782	Yoakum	844
Jack	526	Young	434
Jim Hogg	326	Zavala	654

VIRGINIA

Accomack	1,602	James City	1,576
Brunswick	784	Mecklenburg	536
Charles City	1,898	Nansemond	2,129
Chesterfield	906	New Kent	1,541
Dinwiddie	1,375	Norfolk	1,779
Essex	706	Northampton	1,670
Gloucester	600	Prince George	1,634
Greensville	1,381	Southampton	1,876
Hampton	469	Surry	2,111
Hanover	865	Sussex	1,739
Isle of Wight	2,079		

(Sec. 375, 52 Stat. 66; 7 U.S.C. 1375. Interpretations or applies sec. 301, 52 Stat. 38, as amended; 7 U.S.C. 1301)

Done at Washington, D.C., this 5th day of October 1959.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-8531; Filed, Oct. 8, 1959;
8:51 a.m.]

PART 729—PEANUTS

National Marketing Quota, National Acreage Allotment, and Apportionment to States of National Acreage Allotment for 1960 Crop

§ 729.1101 Basis and purpose.

(a) Section 358(a) of the Agricultural Adjustment Act of 1938, as amended, provides that between July 1 and December 1 of each calendar year the Secretary of Agriculture shall proclaim a national marketing quota for peanuts for the crop produced in the next succeeding calendar year in terms of the total quantity of peanuts which will make available for marketing a supply of peanuts from the crop with respect to which the quota is proclaimed equal to the average quantity of peanuts harvested for nuts during the five years immediately preceding the year in which the quota is proclaimed, adjusted for current trends and prospective demand conditions. Section 358(a) further provides that the national marketing quota established for the crop produced in the calendar year 1941 shall be a quantity of peanuts sufficient to provide a national acreage allotment of not less than 1,610,000 acres, and that the national marketing quota established for any subsequent year shall be a quantity of peanuts sufficient to provide a national acreage allotment of not less than that established for the crop produced in the calendar year 1941.

(b) Except for the preceding limitation, the national marketing quota would be 720,000 tons and the national acreage allotment without allowance for underharvesting would be 1,241,000 acres. When this figure is adjusted for the five year average underharvesting it becomes 1,455,000 acres. In order to obtain the minimum national acreage allotment of 1,610,000 acres, the national marketing quota must be set at 934,000 tons. Section 358(a) also provides that the national marketing quota shall be converted to a national acreage allotment by dividing such quota by the normal yield per acre for the United States.

(c) Section 358(c) of the said Act provides that the national acreage allotment, less the acreage to be allotted to new farms under section 358(f), shall be apportioned among the States on the basis of their share of the national acreage allotment for the most recent year in which such apportionment was made.

(d) Section 729.1102 of this proclamation establishes the national marketing quota, the normal yield per acre, and the national acreage allotment for the 1960 crop of peanuts. Section 729.1103 appor-

tions the 1960 national acreage allotment among the several peanut-producing States. The determinations in these sections are based on the latest available statistics of the Federal Government.

(e) Public notice of the proposed proclamation and determinations to be made with respect to the 1960 national marketing quota, the national acreage allotment, and apportionment of such allotment among the States was given (24 F.R. 6771) in accordance with the Administrative Procedure Act. This proclamation is made after due consideration of recommendations submitted in response to such notice.

§ 729.1102 Proclamation and determination with respect to national marketing quota, normal yield per acre, and national acreage allotment for peanuts for the crop produced in the calendar year 1960.

(a) *National marketing quota.* The amount of the national marketing quota for peanuts for the crop produced in the calendar year 1960 is 934,000 tons.

(b) *Normal yield per acre.* The normal yield per acre of peanuts for the United States is 1,160 pounds.

(c) *National acreage allotment.* The national acreage allotment for the crop produced in the calendar year 1960 is 1,610,000 acres.

§ 729.1103 Apportionment of the national peanut acreage allotment for the crop produced in the calendar year 1960.

The national peanut acreage allotment proclaimed in § 729.1102 is hereby apportioned as follows:

State:	1960 State acreage Allotment
Alabama	218,296
Arizona	717
Arkansas	4,223
California	940
Florida	55,201
Georgia	527,762
Louisiana	1,964
Mississippi	7,560
Missouri	247
New Mexico	4,996
North Carolina	168,966
Oklahoma	138,058
South Carolina	13,805
Tennessee	3,606
Texas	356,022
Virginia	105,625

Total apportioned to States. 1,607,988
Reserve for new farms. 2,012

Total, United States. 1,610,000

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interpret or apply secs. 301, 358, 359, 361-368, 372, 373, 374, 376, 388, 52 Stat. 38, 62, 63, 64, 65, 66, 68, as amended; 55 Stat. 88, 90, as amended; 66 Stat. 27; secs. 106, 112, 377, 70 Stat. 191, 195, 206; 7 U.S.C. 1301, 1358, 1359, 1361-1368, 1372, 1373, 1374, 1376, 1377, 1388)

Issued at Washington, D.C., this 6th day of October 1959. Witness my hand and the seal of the Department of Agriculture.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 59-8530; Filed, Oct. 8, 1959;
8:51 a.m.]

Title 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

PART 31—PACIFIC REGION

Subpart—Bowdoin National Wildlife Refuge, Montana

HUNTING

Basis and purpose. Pursuant to the authority conferred upon the Secretary of the Interior by section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1224; 16 U.S.C. 715i), as amended and supplemented, and acting in accordance with the authority delegated to me by Commissioner's Order No. 4 (22 F.R. 8126), I have determined that the hunting of migratory waterfowl and coots on the Bowdoin National Wildlife Refuge, Montana, would be consistent with the management of the refuge.

By Notice of Proposed Rule Making published in the FEDERAL REGISTER of August 29, 1959 (24 F.R. 7039), the public was invited to participate in the adoption of a proposed regulation (conforming substantially with the rule set forth below) which would permit the hunting of migratory waterfowl and coots on the Bowdoin National Wildlife Refuge by submitting written data, views, or arguments to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within a period of 30 days from the date of publication. No comments, suggestions, or objections having been received within the 30-day period, the regulations constituting Part 31 are amended by adding § 31.11 to Subpart—Bowdoin National Wildlife Refuge, Montana, as follows:

§ 31.11 Migratory waterfowl and coot hunting permitted.

Subject to compliance with the provisions of Parts 6, 18, and 21 of this chapter, migratory waterfowl and coot hunting is permitted on the hereinafter described lands and waters of the Bowdoin National Wildlife Refuge subject to the following conditions, restrictions, and requirements:

(a) *State laws.* Strict compliance with all applicable State laws and regulations is required.

(b) *Permit.* A valid State hunting license, if required under State law, will serve as a Federal permit for hunting on that portion of the refuge opened to hunting.

(c) *Dogs.* Hunting dogs, not to exceed two per hunter, may be used for the purpose of hunting and retrieving, but such dogs shall not be permitted to run at large on the refuge.

(d) *Use of boats.* The use of boats with motors of 10 horsepower or less is permitted for hunting but for no other purpose: *Provided*, That the use of air-thrust and scull boats is prohibited.

(e) *Checking stations.* Hunters, upon entering or leaving the hunting area, shall report at such checking stations as may be established for the purpose of regulating the hunting.

(f) *Camping.* Camping or lighting of fires on the refuge is prohibited, except in designated areas.

(g) *Blinds.* Any person entitled to hunt may construct and use a blind: *Provided*, That construction of a blind does not establish a priority for use by the constructor or any person.

(h) *Hunting area.* Waterfowl and coot hunting will be permitted on the following described lands:

T. 30 N., R. 31 E., MPM.,
Sec. 4, all;
Sec. 5, E $\frac{1}{2}$;
Sec. 8, NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 9, N $\frac{1}{2}$ That part north of Great Northern Railway.
T. 31 N., R. 31 E.,
Sec. 21, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;
Sec. 22, SW $\frac{1}{4}$;
Sec. 27, W $\frac{1}{2}$;
Sec. 28, all;
Sec. 29, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;
Sec. 32, E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 33, all;
Sec. 34, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$.

(Sec. 10, 45 Stat. 1224; 16 U.S.C. 7151)

Although it is the policy of the Department of the Interior that wherever practicable the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003) be observed voluntarily, the imminence of the migratory waterfowl and coot hunting season in the State of Montana makes more than the publication of the advance notice impracticable. In order to meet this emergency, this regulation shall become effective immediately upon publication in the FEDERAL REGISTER.

Issued at Washington, D.C., and dated October 5, 1959.

A. V. TUNISON,
Acting Director, Bureau of
Sport Fisheries and Wildlife.

[F.R. Doc. 59-8505; Filed, Oct. 8, 1959;
8:48 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[C.C.C. Grain Price Support Bulletin 1, 1959
Supp. 1, Amdt. 1, Dry Edible Beans]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1959-Crop Dry Edible Bean Loan and Purchase Agreement Program

MISCELLANEOUS AMENDMENTS

The regulation issued by the Commodity Credit Corporation and the Commodity Stabilization Service (24 F.R. 4359) which contain specific requirements for the 1959-crop dry edible bean price support program are hereby amended as follows:

1. Section 421.4179(d) is amended to eliminate the requirement that "identity preserved" beans must be bagged when the warehouse receipt is issued so that the amended paragraph reads as follows:

§ 421.4179 Warehouse receipts.

(d) In the case of "identity preserved" beans, the warehouse receipt shall also show the lot number, and the producer must execute the supplemental certificate and assume responsibility for the quantity and quality indicated thereon.

2. Section 421.4180(a)(1)(i) is amended to provide that quantity determination by measurement applies only to farm-stored bulk beans. Section 421.4180(a)(1)(ii) is amended to provide for quality determination for warehouse-storage loans on bulk stored "identity preserved" beans and also to include two other minor changes relating to quantity determination. These amended subdivisions read as follows:

§ 421.4180 Determination of quantity.

(a) *When loans are made—*(1) *Farm-storage or "identity-preserved" warehouse-storage beans.* (i) At the time the loan is made, the quantity of beans may be determined either by weight or if farm-stored in bulk, by measurement. Where the quantity is determined by measurement, 2.1 cubic feet shall constitute 100 pounds.

(ii) In the case of bagged beans grading U.S. No. 2 or better, loans shall be made on the basis of the net weight of the lot or on a quantity determined by multiplying the number of bags by 100 pounds whichever is the smaller. In the case of bulk stored "identity preserved" beans grading U.S. No. 2 or better, loans shall be made on the basis of the net weight of the beans as shown on the warehouse receipt or the supplemental certificate. In the case of thrasher-run beans, loans shall be made on the basis of the net weight of sound beans in the lot. Sound beans shall be beans free from dockage and other defects as defined in the United States Standards for Beans.

3. Sections 421.4181(d), 421.4187(b), and 421.4188(b)(2)(i) are amended to provide that lot inspection and weight certificates submitted by producers in connection with purchase agreement and loan deliveries shall be dated not earlier than 30 days prior to the applicable loan maturity date rather than 15 days prior to the applicable loan maturity date. The amended paragraphs and subdivision read as follows:

§ 421.4181 Determination of quality.

(d) Except where quality is guaranteed by the warehouseman as provided in paragraph (b) of this section, the class and grade of beans delivered or acquired under a farm-storage or identity-preserved warehouse-storage loan or a purchase agreement shall be determined from an official lot inspection certificate dated not earlier than 30 days prior to the applicable maturity date for loans and submitted by the producer in accordance with the settlement provisions of this subpart.

§ 421.4187 Delivery of beans under purchase agreement.

(b) *Other than commingled storage in approved warehouses.* In the case of beans stored in other than approved

warehouse storage, or stored identity-preserved in approved warehouse storage the county committee will, on or after the loan maturity date, issue delivery instructions to the producer. The producer must then complete delivery within a 15-day period immediately following the date the county committee issues delivery instructions, unless the county committee determines that more time is needed for delivery. The producer shall, at his expense, furnish to the county committee at the time of delivery official lot inspection and weight certificates dated not earlier than 30 days prior to the applicable maturity date for loans: *Provided, however*, That if at the time of delivery to CCC, a commingled warehouse receipt covering the beans delivered, agreed to by the producer and warehouseman is issued by an approved warehouse, inspection and weight certificates will not be required.

§ 421.4188 Settlement.

(b) *Applicable support rate for class and grade.* * * *

(2) *Farm-storage and identity-preserved warehouse-storage loans.* (i) In the case of eligible beans delivered to CCC from farm-storage or acquired by CCC in identity-preserved warehouse-storage under the loan program, settlement will be made at the applicable county support rate for the class and grade of the total quantity of beans delivered. The producer shall, at his expense, furnish to the county committee official lot inspection and weight certificates dated not earlier than 30 days prior to the applicable maturity date for loans. On farm-storage loans such certificates shall be furnished at the time of delivery of the beans. On identity-preserved warehouse-storage loans such certificates shall be furnished within 10 days after the applicable maturity date. In any instance where the producer fails to furnish to CCC weight or inspection certificates required for settlement, CCC may obtain such certificates. The cost incurred by CCC in obtaining such certificates and any other fees or expenses incurred in connection with settlement on loans shall be for the account of the producer. However, notwithstanding the foregoing provisions of this subdivision, if at the time of delivery to or acquisition by CCC, a commingled warehouse receipt covering the beans delivered or acquired, agreed to by the producer and warehouseman, is issued by an approved warehouse, inspection and weight certificates will not be required and settlement with the producer will be made at the applicable county support rate for the class and grade of the beans shown on the commingled warehouse receipt and accompanying documents for the quantity shown thereon.

(Sec. 4, 62 Stat. 1070, as amended, 15 U.S.C. 714b. Interpret or apply sec. 3, 62 Stat. 1072; secs. 301, 401, 63 Stat. 1033; 15 U.S.C. 714c; 7 U.S.C. 1447, 1421)

Issued this 5th day of October 1959.

WALTER C. BERGER,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 59-8529; Filed, Oct. 8, 1959;
8:51 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATION

[Amdt. 47]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments have been made to this subchapter:

PART I—GENERAL PROVISIONS

Subpart C—General Policies

§ 1.302-4, § 1.302-5 [Deletion and redesignation]

1. Section 1.302-4 has been deleted in view of the substantial revision to § 1.706.

2. Section 1.302-5 has been renumbered § 1.302-4.

3. A new § 1.316 has been added to provide policy guidance concerning the adoption and purchase of items covered by proprietary rights. Section 1.316 reads as follows:

§ 1.316 Selection of items involving proprietary data or other restrictive factors.

In some cases, the procurement of an item would involve proprietary data (see § 9.201(b) of this chapter) or other factors which would restrict sources of procurement or limit competition, but alternative items can be procured which would meet the military needs involved. In such cases, consideration should be given in selecting the item to be procured, to the relative advantages for national defense purposes of the item which involves such proprietary data or other factors as against the disadvantages of a restricted source of supply and possible increased cost to the Government because of lack of competition. However, where a particular item best meets military needs, the contracting activity should not refrain from procuring the item solely because it would involve such restrictions or limitations.

Subpart G—Small Business Concerns

1. Section 1.701-4 is amended as follows:

§ 1.701-4 Regular dealer (nonmanufacturer) as small business concern.

One who submits bids or offers in its own name, but who proposes to furnish a product not manufactured by itself, shall be deemed to be a small business concern only if (i) it is a small business concern within the meaning of § 1.701-1; (ii) it is a regular dealer (nonmanufacturer) (see § 1.201-9(a)); and (iii) in the case of a procurement set aside for small business (see § 1.706) or involving equal low bids (see § 2.406-4 of this chapter) or otherwise involving the preferential treatment of small business, it agrees to furnish in the performance of the contract products manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: Pro-

vided, That this section does not apply to construction or service contractors.

2. A substantial revision has been made in § 1.706-1, and a new Subpart H of this Part 1 has been added to set forth the revised policy with respect to set-asides for small business and labor surplus area concerns. The material includes alternate procedures designed to cope with problems which have developed in connection with the receipt of token bids. These changes have resulted in the deletion of §§ 1.302-4, 2.205, and 3.219, and the revision of §§ 2.204-5, 2.406, 3.101, 3.105, and 3.212-2. Section 1.806 codifies DoD Instruction 4105.33 of 14 April 1954, dealing with existing industry notifications under Defense Manpower Policy No. 4. The amended portions of § 1.706 and new Subpart H read as follows:

Section 1.706-1, as revised, reads as follows:

§ 1.706-1 General.

Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2), any individual procurement or class of procurements or an appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is (1) jointly determined by an SBA representative and the contracting officer, or (2) if no SBA representative is available, is unilaterally determined by the contracting officer to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Insofar as practical, joint determinations shall be used as a basis for set-asides rather than unilateral determinations; but the impracticability of obtaining a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination in an otherwise appropriate case.

Sections 1.706-5, 1.706-6, and 1.706-7, as revised, read as follows:

§ 1.706-5 Total set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2), the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706-1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 1.706-6 as to partial set-asides.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used wherever

possible. Invitations for Bids and Requests for Proposals shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this subchapter, except that bids and awards shall be restricted to small business concerns.

(c) In procurements involving total set-asides for small business, each invitation for Bids or Request for Proposals shall contain substantially the following notice:

NOTICE OF SMALL BUSINESS SET-ASIDE

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of government procurement is placed with small business concerns. A small business concern is a concern that—

(i) Is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or

(ii) Is certified as a small business concern by the Small Business Administration. In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts. Bids or proposals received from firms which are not small business concerns shall be considered non-responsive.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition. For construction contracts, (i) and (ii) of the foregoing notice and the first sentence following (ii) of the notice should be deleted and the following substituted therefor:

(i) Is independently owned and operated;

(ii) Is not dominant in its field of operation; and

(iii) The average annual receipts of the concern and its affiliates for the preceding three years are \$5,000,000 or less.

§ 1.706-6 Partial set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2), a portion of a procurement (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706-1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 1.706-5;

(2) The procurement is severable into two or more economic production runs or reasonable lots; and

(3) Two or more small business concerns are expected to have the technical

competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

Similarly, a class of procurements (including but not limited to contracts for maintenance, repair, and construction) may be partially set aside in accordance with § 1.706-2(c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) In advertised procurements involving partial set-asides for small business, Invitations for Bids shall contain either substantially the following notice or the notice set forth in paragraph (d) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF SMALL BUSINESS SET-ASIDE

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids on the non-set-aside portion beginning with the lowest responsive bid. The set-aside portion will be awarded at the highest unit price awarded for the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns. A small business concern is a concern that—

- (i) Is certified as a small business concern by the Small Business Administration, or
- (ii) Is not dominant in its field of operations, and, with its affiliates, employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns; *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Depart-

ments, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition.

(d) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (c) of this section.

NOTICE OF SMALL BUSINESS SET-ASIDE

(a) *General.* This procurement has been divided into two parts. All concerns, whether small business or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation by small business concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. This apportionment is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. "Small business concern" is defined in paragraph (d) of this Notice.

(b) *Non-set-aside portion and award procedure.* (1) A bidder which is not a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a small business concern and is interested in receiving an award for a quantity of an item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an item in addition to the quantity set forth in the non-set-aside portion, it must bid the entire quantity of the non-set-aside portion of the item, and indicate such additional quantity of the item as it desires by so specifying on the Addendum to this Notice. Thus, the Notice Addendum is not to be used unless the bidder has bid the entire quantity of an item under the non-set-aside portion.

However, a small business concern which receives no award, or receives an award for less than the total quantity of an item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an item, the small business concern must have submitted a responsive bid on such item in accordance with the requirements of (b) (2) above at a unit price no greater than 120 percent of the highest unit price for such item awarded under the non-set-aside portion.

However, see (5) below when different quantities are offered at different prices and see (6) below when different quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be made to eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. However, see (5) below for the method of determining the bid when different quantities are offered at different prices and see (6) below when different quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum a quantity of the set-aside portion of the item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that item, less the quantity, if any, of that item awarded to that concern under the non-set-aside portion.

(B) As to an eligible concern which has submitted a bid for the entire non-set-aside portion of the item and has specified on the Notice Addendum a quantity of the set-aside portion of that item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the total of the entire non-set-aside portion of the item and the quantity thereof specified on the Notice Addendum, less the quantity, if any, of that item awarded to that concern under the non-set-aside portion.

(4) *Price.* The award of the set-aside portion of an item will be made at the highest unit price awarded for the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on different quantities at tie-in prices.

(5) *Different quantities at different prices.* Where a concern has submitted a bid for different quantities of the non-set-aside portion of an item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c) (1) above, and for the purpose of determining under (c) (2) above the standing of that bid in the order of negotiations for the set-aside portion of that item.

(6) *Different quantities at tie-in prices.* Where a concern has submitted a bid for different quantities of the non-set-aside portion of an item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c) (1) above, (ii) the priority status of the firm under (c) (2) above, and (iii) the highest unit price for awards under (c) (4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) *Definitions.* A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is not dominant in its field of operations and with its affiliates employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in

the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(e) *Token bids*. Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(f) *Instruction for use, and explanation of, notice addendum*. The quantity of each item which has been set aside is set forth on the attached Notice Addendum. As provided in (b) (2), the Notice Addendum is to be filled in only by small business concerns. Furthermore, it is to be used by such a concern only when (i) it has submitted a bid for the entire non-set-aside quantity of an item, and (ii) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the Schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each item which has been set aside is as follows:

1	2	3
Item No.	Quantity Set-aside	Quantity Desired

(The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The quantity desired column will be left blank for the bidder or offeror to fill in.)

(e) After all awards have been made on the non-set-aside portion, procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid or proposal as indicated in the foregoing notice. The set-aside portion will be awarded at the highest unit price awarded for the non-set-aside portion.

§ 1.706-7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 1.706-5, as to total set-asides, or in § 1.706-6, as to partial set-asides, the determination referred to in § 1.706-1, is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see § 3.201-2(b) (2) of this chapter as to negotiation).

§ 1.706-8 Contract authority.

Contracts for total or partial set-asides whether entered into by conventional negotiation (see §§ 1.706-5(b) and 1.706-6(e)) or by "Small Business Restricted Advertising" (see § 1.706-5(b)), shall cite as authority 10 U.S.C. 2304(a) (17) and Section 15 of the Small Business Act in the case of a joint determination, or 10 U.S.C. 2304(a) (1), in the case of a unilateral determination (see § 3.201-2 (b) (2) of this chapter).

Subpart H—Labor Surplus Area Concerns

§ 1.800 Scope of subpart.

This subpart sets forth Department of Defense procurement policy and procedures with respect to aiding areas of substantial labor surplus in the United States, its Territories, its possessions, and Puerto Rico. This subpart implements Defense Manpower Policy No. 4 (32-A CFR, Ch. 1).

§ 1.801 Definitions.

§ 1.801-1 Labor surplus area concern.

Labor surplus area concern means a concern which (a) is located within a labor surplus area, and (b) will perform any contract awarded to it as a labor surplus area concern substantially in labor surplus areas.

§ 1.801-2 Labor surplus area.

Labor surplus area means a geographical area:

(a) Classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(b) Not classified as in (a) above, but which is individually certified as an area of substantial labor surplus by a Local State Employment Service Office at the request of any prospective contractor.

§ 1.801-3 Small business concern.

Small business concern is defined in § 1.701.

§ 1.802 General policy.

Except as provided in § 1.806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accommodate the small business policies of Part 1, subpart G, preference shall be given first to labor surplus area concerns which are also small business concerns, second to other labor surplus area concerns, and third to other small business concerns. But in no case will price differentials be paid for the purpose of carrying out this policy.

§ 1.803 Application of policy.

(a) Within the policy set forth in § 1.802, the following shall be applied to procurements which are estimated to exceed \$10,000:

(1) Negotiated procurements shall, where procurement objectives permit, be awarded to labor surplus area concerns: *Provided*, That in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) Where appropriate, procurements shall be made from labor surplus area concerns by partial set-aside procedures, in accordance with § 1.804, and such set-asides shall be given preference over any small business set-aside (but no total set-aside shall be made for labor surplus area concerns);

(3) Each Department shall assure that information identifying labor surplus areas is disseminated promptly to procurement personnel;

(4) Local State Employment Service Office certification (see § 1.801-2(b)) shall be considered conclusive with respect to the particular procurement concerned;

(5) Where less than a complete bidder's mailing list is to be used pursuant to § 2.204-5, a pro rata number of prospective contractors in labor surplus areas shall be solicited; and

(6) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 1.805.

(b) Records of the total value of all contracts in excess of \$10,000 placed with labor surplus area concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in §§ 1.110 and 1.6807. Accordingly, each Department, in soliciting bids and proposals for any procurement estimated to exceed \$10,000 shall request from any bidder or offeror, or other source, any information needed to determine whether the bidder or offeror is a labor surplus area concern. Contract files shall be documented to indicate the extent to which labor surplus area concerns were considered and the action taken with respect thereto.

§ 1.804 Partial set-asides for labor surplus area concerns.

§ 1.804-1 General.

(a) (1) In accordance with the policy set forth in §§ 1.802 and 1.803, a portion of each procurement shall be set aside for labor surplus area concerns if:

(i) The procurement is severable into two or more economic production runs or reasonable lots; and

(ii) Two or more labor surplus area concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

(2) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as

are not awarded to labor surplus area concerns. (In this respect, see applicable provisions of § 1.804-2 (b) and (c), for notices to bidders or offerors, and § 1.804-2(d) for conduct of set-aside negotiations.)

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) The item to be purchased is on a Planned Procurement List or under the Production Allocation Program;

(3) The item to be purchased is on a Qualified Products List;

(4) A period of less than thirty days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals;

(5) The procurement is classified; or

(6) Labor surplus area concerns are receiving a fair proportion of contracts.

§ 1.804-2 Set-aside procedures.

(a) Where a portion of a procurement is to be set aside pursuant to § 1.804-1, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) In advertised procurements involving set-asides pursuant to this Part, each invitation for bids shall contain either substantially the following notice or the notice set forth in paragraph (c) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of this set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Labor surplus area concerns which are also small business concerns.

Group 2. Other labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion will be awarded at the highest unit price awarded for the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair

advantage over other bidders eligible for the set-aside portion.

DEFINITIONS

(1) A "labor surplus area" is a geographical area:

(i) Classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of substantial labor surplus by a local State Employment Service Office at the request of any prospective contractor.

(2) A "labor surplus area concern" is a concern which (i) is located within a labor surplus area, and (ii) will perform any contract awarded to it as a labor surplus area concern substantially in labor surplus areas.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is not dominant in its field of operations and with its affiliates employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns; *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition.

(c) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (b) of this section.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

(a) *General*. This procurement has been divided into two parts. All concerns, whether in a labor surplus area or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation (i) by labor surplus area concerns, and (ii) to a limited extent, by small business concerns which do not qualify as labor surplus area concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. Definitions of the following terms are set forth in paragraph (d) of this Notice:

- (1) Labor surplus area.
- (2) Labor surplus area concern.
- (3) Small business concern.

(b) *Non-set-aside portion and award procedure*. (1) A bidder which is not a labor surplus area concern or a small business concern shall submit a bid *only* for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a labor surplus area concern or a small business concern and is interested in receiving an award for a

quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, it *must* bid the *entire* quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as it desires by so specifying on the Addendum to this Notice. Thus, the Notice Addendum is not to be used unless the bidder has bid the *entire* quantity of an Item under the non-set-aside portion.

However, a labor surplus area or small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure*. Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to labor surplus area or small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility*. To be eligible for consideration for the set-aside portion of an Item, the labor surplus area or small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b) (2) above at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when different quantities are offered at different prices and see (6) below when different quantities are offered at tie-in prices.

(2) *Priorities*. Negotiations for the set-aside portion will be conducted with eligible bidders in the following order of priority:

Group 1. Labor surplus area concerns which are also small business concerns.

Group 2. Other labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations for each Item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bids. However, see (5) below for the method of determining the bid when different quantities are offered at different prices and see (6) below when different quantities are offered at tie-in prices.

(3) *Quantity*. The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum a quantity of the set-aside portion of the Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, *less* the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(B) As to an eligible concern which has submitted a bid for the entire non-set-aside portion of the Item and has specified on the Notice Addendum a quantity of the set-aside portion of that Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Notice Addendum, *less* the quan-

tity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The award of the set-aside portion of an Item will be made at the highest unit price awarded for the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on different quantities at tie-in prices.

(5) *Different quantities at different prices.* Where a concern has submitted a bid for different quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Different quantities of tie-in prices.* Where a concern has submitted a bid for different quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) *Definitions.*

(1) A "labor surplus area" is a geographical area:

(i) Classified as such by the Department of Labor and set forth in a list entitled "Areas of Substantial Labor Surplus" issued by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) Not classified as in (i) above, but which is individually certified as an area of substantial labor surplus by a local State Employment Service Office at the request of any prospective contractor.

(2) A "labor surplus area concern" is a concern which (i) is located within a labor surplus area, and (ii) will perform any contract awarded to it as a labor surplus area concern substantially in labor surplus areas.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is not dominant in its field of operations and with its affiliates employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in its own name must agree to furnish in the performance of the contract supplies manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns; *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(e) *Token bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(f) *Instruction for use, and explanation of, notice addendum.* The quantity of each Item which has been set aside is set forth on the attached Notice Addendum. As provided in (b)(2), the Notice Addendum is to be filled in only by labor surplus area and

small business concerns. Furthermore, it is to be used by such a concern only when (1) it has submitted a bid for the entire non-set-aside quantity of an Item, and (ii) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a labor surplus area or small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each item which has been set aside is as follows:

1	2	3
Item No.	Quantity set-aside	Quantity desired
(The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The quantity desired column will be left blank for the bidder or offeror to fill in.)		

(d) After all awards have been made on the non-set-aside portion, procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices. The set-aside portion shall be awarded at the highest unit price awarded for the non-set-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see § 3.201-2 (b)(1) of this chapter as to negotiation).

§ 1.804-3 Withdrawal of set-asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

§ 1.804-4 Contract authority.

Contracts for set-asides made under this Subpart H shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see § 3.201-2(b)(1) of this chapter for contracts awarded to labor surplus area concerns and § 3.201-2(b)(2) for contracts awarded to small business concerns which are not labor surplus area concerns.

§ 1.805 Subcontracting.

§ 1.805-1 General policy.

It is the policy of the Government to encourage placement of subcontracts with concerns which will perform such subcontracts substantially in areas of current labor surplus where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

§ 1.805-2 Required clause.

The clause "Utilization of Concerns in Labor Surplus Areas" as set forth in § 7.104-20 of this chapter, shall be inserted in contracts as required by § 7.104 of this chapter.

§ 1.806 Depressed industries.

§ 1.806-1 General.

When an entire industry is depressed, the Director of Civil and Defense Mobilization may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by Office of Civil and Defense Mobilization Notifications, and such industries will be given special treatment as specified therein. §§ 1.806-2 through 1.806-5 reflect pertinent requirements of such Notifications with respect to the industries indicated. No price differentials will be paid to carry out policies of these Notifications.

§ 1.806-2 Apparel industry (Notification No. 53).

(a) As used in this section the "apparel industry" means all of the industry identified in the "Standard Industrial Classification Manual," under Major Group 23, except Group No. 239.

(b) There shall be no labor surplus area set-asides in this industry. Where feasible, under the same invitation, bids should be requested for jackets or coats and trousers as separate items so that bidders may bid in combinations of units, and if requirements warrant, at least an equal amount of trousers should be included.

§ 1.806-3 Petroleum and petroleum products industry (Notification No. 58).

There shall be no labor surplus area set-asides in this industry.

§ 1.806-4 Shipbuilding industry (Notification No. 57).

(a) As used in this section, the "shipbuilding industry" includes establishments primarily engaged in building all types of ships, barges, canal boats and lighters of five gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabricating structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included.

(b) There shall be no labor surplus area set-asides in this industry. In placing shipbuilding contracts, preferences shall be given, where practicable, to contractors which can perform the contracts without substantial use of

overtime labor and without constructing new facilities. So as to spread work among a large number of private yards, bids or proposals shall be invited, and contracts awarded, on a small-lot basis rather than on a large-lot basis, to the extent practicable.

§ 1.806-5 Textile industry (Notification No. 38).

(a) As used in this section, the "textile industry" means all of the industry identified in the "Standard Industrial Classification Manual" under Major Group 22 (Textile Mill Products) and Industry Nos. 2391 and 2392 (Curtains and draperies, and house-furnishings), except that it does not include Industry No. 2274 (Linoleum, asphalt-felt base, and other hard-surface floor covering, not elsewhere classified), and Industry No. 2298 (Cordage and twine).

(b) No preference shall be given to any area or city in placing contracts in this industry. For the purpose of maintaining the effective functioning of the textile industry as a whole, purchasing activities shall try to place contracts with manufacturers whose weaving operations (in the case of weaving or integrated mills) or whose spinning operations (in the case of spinning mills) during the period of performance of such contracts will not exceed 80 hours per week (not including other supporting activities).

(c) In all procurements from the textile industry which are estimated to exceed \$10,000, partial set-asides, exclusively for textile industry concerns whose "weaving" or "spinning" operations (as described in (b) above) will not exceed 80 hours per week, shall be made substantially in accordance with the procedures set forth in § 1.804, except that all "textile industry concerns whose weaving or spinning operations will not exceed 80 hours per week" will be treated as "labor surplus area concerns." The notice set forth in § 1.804-2 (b) shall be designated "Notice of 80-Hour Week Set-Aside" and appropriately modified for use in accordance with this subparagraph.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

1. Section 2.204-5 has been revised as follows:

§ 2.204-5 Excessively long bidders' mailing lists.

When the number of names on a bidders' mailing list is deemed to be excessive in relation to a specific procurement, such methods as (a) rotation of bidders' mailing lists, (b) use of pre-invitation notices, or (c) otherwise determined to be advantageous in this respect, may be employed to provide a reduced list of names for use in making the specific procurement. (But see § 1.803(a)(5) of this chapter with respect to labor surplus area concerns, and § 1.702(b)(2) of this chapter with respect to small business concerns.)

§ 2.205 [Deletion]

2. Section 2.205 has been deleted.

Subpart D—Opening of Bids and Award of Contract

Sections 2.406-1 and 2.406-4 have been revised as follows:

§ 2.406-1 Responsible bidder.

A "responsible bidder" is a bidder who satisfies the requirements of Part 1, subpart I of this chapter. (See also Defense Contract Financing Regulations, Part 82, Subchapter G of this chapter.)

§ 2.406-4 Equal low bids.

(a) When two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and all other factors properly to be considered), award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives; *Provided:*

(1) Subject to (2), (3) and (4) below, (A) in the case of equal low bids, one of which is submitted by a small business concern, as defined in § 1.701 of this chapter, award shall be made to the small business concern, and (B) in the case of equal low bids, two or more of which are submitted by small business concerns, award shall be made by a drawing by lot limited to the small business concerns.

(2) Where two or more equal low bids are received from small business concerns, one of which is submitted by a bidder who will perform the contract in a labor surplus area as defined in § 1.801-2 of this chapter, award shall be made to the small business concern which will perform the contract in such labor surplus area.

(3) In the case of equal low bids, two or more of which are submitted by small business concerns which will perform the contract in a labor surplus area, award shall be made by a drawing by lot limited to the small business concerns in the labor surplus area.

(4) Where two or more equal low bids are received, one bid being from a business concern (whether small or not) not in a labor surplus area and the other being from a bidder who, although not a small business concern, will perform the contract in a labor surplus area, award shall be made to the latter.

(b) When award is to be made by lot and the information available shows that the product of a particular manufacturer is offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 3—PROCUREMENT BY NEGOTIATION

Subpart A—Use of Negotiation

1. Paragraphs (j) and (m) of § 3.101 have been revised as follows:

§ 3.101 Negotiation as distinguished from formal advertising.

(j) Consideration of the size of the business concern (see Part 1, Subpart G);

(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

2. Section 3.105 has been amended as follows:

§ 3.105 Aids to labor surplus area concerns in negotiated procurement.

See Part 1, Subpart H of this chapter.

Subpart B—Circumstances Permitting Negotiation

1. Section 3.201-2 has been revised as follows:

§ 3.201-2 Application.

(a) The authority of this § 3.201 shall be used only to the extent determined by the Assistant Secretary of Defense (Supply and Logistics) to be necessary in the public interest, and then only in accordance with Departmental procedures consistent with this § 3.201.

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Assistant Secretary of Defense (Supply and Logistics) has determined that only the following procurements may be made pursuant to the authority of 10 U.S.C. 2304(a)(1):

(1) Procurements made in keeping with (A) labor surplus set-aside programs, including, where no other negotiating authority is appropriate, the placement of contracts for any part of the total requirements set-aside which are not filled by awards made in accordance with the provisions of the Notice of Labor Surplus Set-Aside (see § 1.804-2 (c) of this chapter), or (B) disaster area programs;

(2) Procurements made in keeping with the small business programs (A) after unilateral determinations for set-asides, or (B) to place any part of the total requirements set-aside which are not filled by awards to small business concerns, where no other negotiating authority is appropriate (see § 1.706-7 of this chapter); and

(3) Procurements of property or services for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research involving more than \$2,500 but not more than \$100,000 from contractors other than educational institutions.

(c) Except as authorized in (b) above, procurements may be negotiated only when authorized by 10 U.S.C. 2304(a)(2) through 10 U.S.C. 2304(a)(17) (§§ 3.202 through 3.217), 10 U.S.C. 2304(c) (§ 3.218), and § 3.219; determinations and findings shall be made in accordance with 10 U.S.C. 2310 and 10 U.S.C. 2311 (subpart C of this part); and the appropriate authority shall be cited in each contract.

§ 3.219 [Deletion]

2. Section 3.219 has been deleted as a result of revision of § 1.706 and new Subpart H of Part 1.

Subpart D—Types of Contracts

Section 3.402 has been revised as follows:

§ 3.402 Selection of contract type.

(a) *General.* The firm fixed-price contract shall be used unless, under the applications and limitations contained in this Subpart, the use of another type of contract is more appropriate. However, the selection of contract type is generally a matter for negotiation. The proper selection of an appropriate type of contract is of primary importance in obtaining fair and reasonable prices under all of the circumstances. The type of contract therefore has a direct effect upon the resulting price or cost to the Government. Type of contract and pricing are interrelated and should be so considered together in negotiation, in accordance with the provisions of § 3.803. In determining the type of contract to be utilized, consideration should be given to such factors as:

- (1) Type and complexity of the item;
- (2) Urgency of the requirement;
- (3) The period of contract performance and the length of the production run;
- (4) Degree of competition present;
- (5) Difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience, or the instability of design;
- (6) Availability of comparative price data, or lack of firm market prices or wage levels;
- (7) Prior experience with the contractor;
- (8) Extent and nature of subcontracting contemplated;
- (9) Assumption of business risk;
- (10) Technical capability and financial responsibility of the contractor; and
- (11) Administrative costs of both parties.

Early agreement should be reached between the Government and the contractor on the type of contract best suited to the procurement. Except in the case of a firm fixed-price contract, contract files shall include documentation to show the reasons why the particular contract type was utilized.

(b) *Research and development.* A fixed-price contract normally should not be used to contract for research and development work unless the work to be performed can be described with a reasonable degree of definiteness, sufficient pricing information is available to assure that the contract price will be fair and reasonable, a definite period of performance can be specified, and successful performance of the contract is not dependent upon a breakthrough in the state of the art.

Subpart F—Small Purchases

1. Section 3.600 has been revised to clarify authority to make small pur-

chases from mandatory sources of supply, with their concurrence, by the most administratively economical small purchase method. Section 3.600, as revised, reads as follows:

§ 3.600 Scope of Subpart.

This Subpart deals with the purchase of supplies and services (other than personal) when the aggregate amount involved in any one transaction does not exceed \$2,500. Such purchases shall be termed "small purchases." This Subpart is not applicable to supplies or services required to be procured in accordance with Part 5 of this subchapter (except as specifically provided therein), nor to any procurement initially estimated to exceed \$2,500 even though awards under such procurements do not exceed \$2,500.

2. Section 3.606-1 has been revised as follows:

§ 3.606-1 General.

The blanket purchase agreement method provides a means—of establishing "charge accounts" with qualified sources of supply to cover anticipated small purchases, as required, of readily available items of the same general category, and obviates the need for the issuance of a multiplicity of individual purchase instruments for small quantities of supplies. To the extent practicable, blanket purchase agreements for like items should be placed concurrently with more than one supplier. Requests against such agreements shall be placed only after compliance with § 3.603.

Subpart H—Price Negotiation Policies and Techniques

Sections 3.802-2, 3.802-3, and 3.805 have been revised to provide a unified policy concerning the evaluation of late proposals in the course of negotiated procurement. Late proposals should be considered if there is a probability of a significant reduction in price or cost to the government or technical improvement. Additionally, the revision provides that a re-solicitation may include notice to quoters that late proposals will not be considered. Sections 3.802-2, 3.802-3, and 3.805, as revised, read as follows:

§ 3.802-2 Selection of prospective sources.

Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be solicited from a sufficient number of competent potential sources to insure adequate competition. (See §§ 1.302, 1.902 of this chapter, §§ 3.101, 3.104, 3.105 and § 12.102 of this chapter.)

§ 3.802-3 Requests for proposals.

(a) Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals shall be as complete as possible with respect to (1) item description or statement of work; (2) specifications; (3) Government-furnished property, if any; (4) required delivery schedule; and (5) contract clauses. If a price

breakdown is required, the request for proposals shall so state. Requests for proposals, including requests for revised proposals, shall specify a date for their submission. Any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be issued to prospective offerors at the same time and no prospective offeror shall be given the advantage of advance knowledge that proposals are to be requested. Generally, requests for proposals shall be in writing. However, in appropriate cases, such as the procurement of perishable subsistence, proposals may be solicited orally.

(b) Written requests for proposals shall contain a provision substantially as follows:

Late proposals. The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government.

(c) While it is important and desirable that the Government should not be precluded from gaining the benefit of late proposals, careful consideration of such situations is required to prevent excessive resolicitations and other abuses. Where failure of any proposal to arrive on time is due solely to a delay for which the offeror was not responsible, or where only one proposal is received, the contracting officer may consider the proposal without utilizing the resolicitation procedure prescribed below. Proposals, or modifications thereof, received after the latest date specified for receipt by the contracting officer should be considered if there is a probability of a significant (1) reduction in price or cost to the Government, or (2) technical improvement, as compared with proposals previously received. The following procedure shall apply, except that it need not be followed for small purchases:

(1) Where a late proposal, or a late proposal otherwise worthy of consideration, is received from a qualified firm, the contracting officer shall document a recommendation that the proposal, either should or should not be considered, and send it for decision to such other authority as may be prescribed by the Department concerned.

(2) When it is determined by such other authority that it is in the best interest of the Government to consider the late proposal, the contracting officer shall, consistent with § 3.805(a)(2), resolicit all firms (including the late offeror) which have submitted proposals and have been determined to be capable of meeting requirements. Such resolicitation shall specify a date for submission of new or revised proposals. In appropriate cases, such as where further delay in making award will jeopardize meeting the Government's requirement, a resolicitation may provide that late proposals shall not be considered, notwithstanding the Government's reservation of a right to consider such proposals (as stated in the Late Proposals provision required by § 3.802-3(b)).

§ 3.805 Selection of offerors for negotiation and award.

(a) The normal procedure in negotiated procurements, after receipt of initial proposals, is to conduct such written or oral discussions as may be required to obtain agreements most advantageous to the Government. Negotiations shall be conducted as follows:

(1) Where a responsible offeror submits a responsive proposal which, in the contracting officer's opinion, is clearly and substantially more advantageous to the Government than any other proposal, negotiations may be conducted with that offeror only; or

(2) Where several responsible offerors submit offers which are grouped so that a moderate change in either the price or the technical proposal would make any one of the group the most advantageous offer to the Government, further negotiations should be conducted with all offerors in that group.

Whenever negotiations are conducted with more than one offeror, no indication shall be made to any offeror of a price which must be met to obtain further consideration, since such practice constitutes an auction technique which must be avoided. No information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Whenever negotiations are being conducted with several offerors, while such negotiations may be conducted successively, all offerors participating in such negotiations shall be offered an equitable opportunity to submit such pricing, technical, or other revisions in their proposals as may result from the negotiations. All offerors shall be informed that after the submission of final revisions, no information will be furnished to any offeror until award has been made. Modifications of proposals received after the submission of final prices shall be considered only under the circumstances set forth in § 3.802-3(c) (relating to late proposals).

(b) There are certain circumstances where formal advertising is not possible and negotiation is necessary. In the conduct of such negotiations, where a substantial number of clearly competitive proposals have been obtained and where the contracting officer is satisfied that the most favorable proposal is fair and reasonably priced, award may be made on the basis of the initial proposals without oral or written discussion: *Provided*, That the request for proposals notifies all offerors of the possibility that award may be made without discussion of proposals received and, hence, that proposals should be submitted initially on the most favorable terms, from a price and technical standpoint, which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposal, the contracting officer shall not make an award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Government involves a material departure from the stated re-

quirements, consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal: *Provided*, That this can be done without revealing to the other firms any information which is entitled to protection under § 3.109.

(c) A request for proposals may provide that after receipt of initial technical proposals, such proposals will be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable, and upon submission of prices thereafter, award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(d) The procedures set forth in (a), (b), and (c) of this section may not be applicable in appropriate cases when procuring research and development, or special services (such as architect-engineer services) or when cost-reimbursement type contracting is anticipated. Award of a contract may be properly influenced by the proposal which promises the greatest value to the Government in terms of possible performance, ultimate productivity, growth potential and other factors rather than the proposal offering the lowest price or probable cost and fixed fee.

(e) Whenever in the course of negotiation a substantial change is made in the Government's requirements (for example, increases or decreases in quantities or material changes in the delivery schedules), all offerors shall be given an equitable opportunity to submit revised proposals under the changed requirements.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 5—INTERDEPARTMENTAL PROCUREMENT

Subpart A—Procurement Under Federal Supply Schedule Contracts

Section 5.101 has been revised as follows:

§ 5.101 Federal supply schedule contracts.

The Federal Supply Service, General Services Administration, enters into open

Bamboo, split.....	None.
Braids, straw.....	Italy, Japan.
Bristles, hog, including such bristles in knots or other processed condition.	None.
Brushes, paint (including parts thereof), containing hog bristles, if any such bristle is more than 1½ inches in total length or more than 1¼ inches in length out of the ferrule.	None.
Eggs, poultry:	
Whole in the shell, other than chicken.....	None.
Whole, dried.....	None.
Albumen, dried.....	None.
Yolks, dried.....	None.
Floor coverings, grass and straw, including seagrass mats and squares.	Japan.
Fur skins:	
Goat and kid.....	Argentina, Ethiopia (including Eritrea), Iran, Iraq.
Kolinsky.....	Republic of Korea.
Weasel.....	Canada.

end contracts for many classes of supplies and services which, although in common use by Federal agencies, normally do not lend themselves to definite quantity consolidated buying or to distribution from GSA warehouse stock. Federal Supply Schedules are General Services Administration publications which list under commodity classifications the supplies or services to be purchased from the contractors named therein. Military purchasing activities are required (see § 5.103) or authorized (see §§ 5.104 and 5.105) to order supplies and services under Federal Supply Schedule contracts. The ordering of such supplies and services under Federal Supply Schedule contracts shall be effected by placing delivery orders on DD Form 1155 (Order for Supplies or Services) (see § 16.303) in accordance with the provisions of the applicable Federal Supply Schedule and §§ 5.103, 5.104, and 5.105, or, when agreed to by the contractor, by one of the methods set forth in §§ 3.604, 3.605, or 3.606 of this chapter.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 6—FOREIGN PURCHASES

Subpart D—Purchases From Soviet-Controlled Areas

The lists of supplies in §§ 6.401-3 and 6.401-4 have been revised to conform to the lists published in the Foreign Assets Control Regulations, as revised by the Treasury Department on 8 January 1959. Sections 6.401-3 and 6.401-4, as revised, read as follows:

§ 6.401-3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (1) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, (2) the acquisition is approved by an authorized Treasury Department representative, or (3) the supplies are acquired directly from the countries indicated:

Garments, Chinese type.....	None.
Jade, stones, cut but not set and suitable for use in jewelry.....	None.
Menthol, natural and synthetic (other than racemic).....	Brazil.
Silk, piece goods, tussah and muga.....	None.
Silk, tussah and muga.....	None.
Tea, Chinese type.....	Formosa.
Tung oil.....	Argentina, Brazil, Paraguay.
Walnuts.....	France, Iran, Italy, Turkey.

§ 6.401-4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 6.401-2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless (1) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, or (2) the acquisition is approved by an authorized Treasury Department representative:

Agar-agar.
Bamboo:
Bags, baskets and other manufactures, excluding furniture.
Poles and sticks.
Brocades and brocade articles.
Camphor, natural and synthetic.
Camphor oil, natural and synthetic.
Carpets.
Castor bean.
Castor oil.
Chinaaware, other than Dresdenware and Meissenware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Edible marine products.
Embroideries and embroidered articles.
Feather manufactures.
Glass, sheet (window).
Graphite.
Hair nets, regardless of the material from which made.
Handkerchiefs.
Hardwood manufactures, including furniture other than bentwood furniture.
Hats, paper.
Honey.
Ivory manufactures.
Lace and lace articles.
Linen manufactures, excluding wearing apparel other than wearing apparel made in whole or in part of brocade, embroidery or lace.
Ores and metals:
Antimony.
Bismuth.
Quicksilver.
Molybdenum.
Tin.
Tungsten.
Peanuts and peanut products.
Poultry, including pigeons, frozen or otherwise prepared or preserved.
Rumie.
Rugs.
Seagrass and straw manufactures, excluding floor covering.
Sesame, oil and seed.
Shoes, leather-soled with non-leather uppers, except ladies' high-heel shoes.
Silk:
Raw and manufactures other than Western style suits and Indian saris.
Waste.
Skins, deer and goat.
Stones, semiprecious, and manufacture thereof, including jewelry.

Tapestries, including needlework tapestries.
Tapioca, including tapioca flour.
(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 7—CONTRACT CLAUSES

Section 7.101 has been deleted as being obsolete; § 7.102 has been revised to except short form negotiated supply contracts (DD Forms 1261 and 1270) from the definition of "fixed-price supply contract" as used by Subpart A of Part 7. A new Subpart C has been added to set forth, for the first time, uniform clauses for use in fixed-price research and development contracts. The clauses are grouped as to those required, those to be used when applicable, and those to be used when the subject matter covered is desired. Revised § 7.102 and new subpart C read as follows:

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 7.101 [Deletion]

§ 7.102 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders (but see §§ 7.104-15 and 7.104-16), (2) short form negotiated supply contracts (see § 16.202-1(b) of this chapter), (3) letter contracts, (4) notices of award, and (5) amendments or supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation or other form of price revision as covered in § 3.403); and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this subchapter.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

Sec.	
7.301	Applicability.
7.302	Required clauses.
7.302-1	Definitions.
7.302-2	Payments.
7.302-3	Standards of work.
7.302-4	Inspection.
7.302-5	Assignment of claims.
7.302-6	Examination of records.
7.302-7	Federal, state, and local taxes.
7.302-8	Utilization of small business concerns.
7.302-9	Default.

Sec.	
7.302-10	Termination for convenience of the government.
7.302-11	Disputes.
7.302-12	Renegotiation.
7.302-13	Buy American Act.
7.302-14	Convict labor.
7.302-15	Walsh-Healey Public Contracts Act.
7.302-16	Eight-Hour Law of 1912—overtime compensation.
7.302-17	Nondiscrimination in employment.
7.302-18	Officials not to benefit.
7.302-19	Covenant against contingent fees.
7.302-20	Gratuities.
7.302-21	Authorization and consent.
7.302-22	Notice and assistance regarding patent infringement.
7.302-23	Patent rights.
7.302-24	Basic data clause.
7.302-25	Military security requirements.
7.302-26	Utilization of labor surplus area concerns.
7.303	Clauses to be used when applicable.
7.303-1	Clauses for contracts involving construction work.
7.303-2	Filing of patent applications.
7.303-3	Reporting of royalties.
7.303-4	Excess profit.
7.303-5	Preference for certain domestic commodities.
7.303-6	Priorities, allocations, and allotments.
7.303-7	Government-furnished property.
7.303-8	Soviet-controlled areas.
7.303-9	Notice to the government of labor disputes.
7.303-10	Limitation on Withholding of payments.
7.304	Additional clauses.
7.304-1	Changes.
7.304-2	Alterations in contract.
7.304-3	Approval of contract.
7.304-4	Bill of materials.
7.304-5	Notice of shipments.
7.304-6	New features of design.
7.304-7	Reports of work.

AUTHORITY: R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202.

§ 7.301 Applicability.

As used throughout this subpart, the term "fixed-price research and development contract" means any contract (other than a letter contract, a notice of award, or a modification not affecting new procurement) which (i) is entered into at a fixed price in an amount exceeding \$2,500 (with or without any provision for price redetermination, escalation, or other form of price revision as covered in § 3.403, of this chapter), and (ii) is for experimental, developmental, or research work. See § 3.402(b) of this chapter limiting use of fixed-price contracts for research and development work.

§ 7.302 Required clauses.

The following clause shall be inserted, as required, in all fixed-price research and development contracts, except as may otherwise be indicated in this subpart.

§ 7.302-1 Definitions.

Insert the contract clause set forth in § 7.103-1. Additional definitions may be included in such clause provided they are not inconsistent with such clause or the provisions of this subchapter.

§ 7.302-2 Payments.

PAYMENTS

The Contractor shall be paid, upon submission of proper invoices or vouchers, the

prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

§ 7.302-3 Standards of work.

STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 7.302-4 Inspection.

(a) The following clause shall be used where the primary contract objective is delivery of end items other than designs, drawings or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause is not used, the clause provided in paragraph (b) of this section shall be used.

INSPECTION

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the per-

formance of this contract and for such longer period as may be specified elsewhere in this contract.

(b) The following clause shall be inserted in all contracts subject to this part where the clause in paragraph (a) of this section is not used.

INSPECTION

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 7.302-5 Assignment of claims.

In accordance with the instructions set forth in § 7.103-8, insert the contract clause set forth therein.

§ 7.302-6 Examination of records.

In negotiated fixed-price research and development contracts, insert the clause set forth in § 7.104-15 in accordance with the requirements set forth therein.

§ 7.302-7 Federal, state, and local taxes.

In accordance with the requirements of § 11.401 of this chapter, insert the contract clause set forth in §§ 11.401-1 or 11.401-2 of this chapter as appropriate.

§ 7.302-8 Utilization of small business concerns.

Insert the contract clause set forth in § 7.104-14 in all contracts in amounts exceeding \$5,000, except contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.302-9 Default.

In accordance with the requirements of § 8.710 of this chapter, insert the clause set forth therein.

§ 7.302-10 Termination for convenience of the government.

In accordance with the requirements of §§ 8.701 and 8.704 of this chapter, insert the appropriate contract clause.

§ 7.302-11 Disputes.

In accordance with the instructions in § 7.103-12, insert the contract clause set forth in § 7.103-12.

§ 7.302-12 Renegotiation.

Insert the contract clause set forth in § 7.103-13.

§ 7.302-13 Buy American Act.

In accordance with the requirements of § 6.104-5 of this chapter, insert the contract clause set forth therein.

§ 7.302-14 Convict labor.

In accordance with the requirements of 12-202, insert the contract clause set forth in ASPR 12-203.

§ 7.302-15 Walsh-Healey Public Contracts Act.

In accordance with the requirements of Part 12, subpart F of this chapter, insert the contract clause set forth in § 12.604 of this chapter.

§ 7.302-16 Eight-hour law of 1912—overtime compensation.

In accordance with the instructions of § 12.303 of this chapter, insert the clause set forth therein.

§ 7.302-17 Nondiscrimination in employment.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.302-18 Officials not to benefit.

Insert the contract clause set forth in § 7.103-19.

§ 7.302-19 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103-20.

§ 7.302-20 Gratuities.

In accordance with the requirements of § 7.104-16, insert the contract clause set forth therein.

§ 7.302-21 Authorization and consent.

In accordance with the requirements of § 9.102 of this chapter, insert the appropriate contract clause set forth therein.

§ 7.302-22 Notice and assistance regarding patent infringement.

In accordance with the requirements of § 9.104 of this chapter, insert the contract clause set forth therein.

§ 7.302-23 Patent rights.

In accordance with the requirements of § 9.107 of this chapter, insert the appropriate contract clause set forth therein with additional or alternate paragraphs as prescribed therein. However, in the case of contracts awarded on the basis of no profit, the percentage amount specified to be withheld under paragraph (f) of the clause set forth in § 9.107-2 of this chapter, or paragraphs (c) and (d) of the clause set forth in § 9.107-3 of this chapter, may be changed from "ten percent (10%)" to "one percent (1%)."

§ 7.302-24 Basic data clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203-1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions in §§ 9.203 and 9.204-1 of this chapter.

§ 7.302-25 Military security requirements.

(a) Except as provided in paragraph (b) of this section, insert the contract clause prescribed by § 7.104-12: *Provided*, That the clause may be modified in accordance with § 7.104-12 with respect to contracts outside the United States, its Territories, its possessions,

and Puerto Rico, with respect to additional security safeguards.

(b) In any research and development contract with an educational institution when the contract is awarded on the basis of no profit, insert the clause set forth in § 7.402-24(b), except that such clause may be appropriately modified for contracts to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

(c) The contracting officer or his authorized representative shall prepare and transmit to the contractor and the Government representative having security cognizance over the contract involved a Security Requirements Check List (DD Form 254) or other written notification, in accordance with § 16.811 of this chapter.

§ 7.302-26 Utilization of labor surplus area concerns.

Insert the contract clause set forth in § 7.104-20, except in contracts of which the contract price does not exceed \$5,000 and in contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.303 Clauses to be used when applicable.

§ 7.303-1 Clauses for contracts involving construction work.

In accordance with the requirements of § 12.403 of this chapter, insert the clauses entitled:

- Davis-Bacon Act.
- Eight-Hours Laws—Overtime Compensation.
- Apprentices.
- Payroll Records and Payrolls.
- Copeland ("Anti-Kickback") Act.
- Withholding of Funds To Assure Wage Payment.
- Subcontracts—Termination.

§ 7.303-2 Filing of patent applications.

In accordance with the requirements of § 9.106 of this chapter, insert the contract clause set forth in § 9.106 or § 9.106-1 of this chapter, as appropriate.

§ 7.303-3 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the contract clause set forth therein.

§ 7.303-4 Excess profit.

In accordance with the requirements of § 7.104-11, insert the appropriate contract clause set forth therein.

§ 7.303-5 Preference for certain domestic commodities.

In accordance with the requirements of § 6.305 of this chapter, insert the contract clause set forth therein.

§ 7.303-6 Priorities, allocations, and allotments.

In accordance with the requirements of § 1.308-2 of this chapter, insert the contract clause set forth in § 7.104-18.

§ 7.303-7 Government-furnished property.

In accordance with the requirements set forth in §§ 13.502 and 13.505 of this chapter, insert the appropriate contract clause.

§ 7.303-8 Soviet-controlled areas.

In accordance with the requirements of § 6.403 of this chapter, insert the contract clause set forth therein.

§ 7.303-9 Notice to the Government of labor disputes.

Insert the clause set forth in § 7.104-4 in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

§ 7.303-10 Limitation on withholding of payments.

Insert the clause in § 7.104-21(a) when required by § 7.104-21.

§ 7.304 Additional clauses.

The following clauses shall be inserted in accordance with Departmental procedures where it is desired to cover the subject matter thereof in such contracts.

§ 7.304-1 Changes.

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures.

§ 7.304-2 Alterations in contract.

The contract clause set forth in § 7.105-1 may be inserted.

§ 7.304-3 Approval of contract.

The contract clause set forth in § 7.105-2 may be inserted.

§ 7.304-4 Bill of materials.

The contract clause set forth in § 7.105-6 may be inserted pursuant to the provisions of said paragraph.

§ 7.304-5 Notice of shipments.

The contract clause set forth in § 7.105-4 may be inserted.

§ 7.304-6 New features of design.

The contract clause set forth in § 7.404-5 may be inserted.

§ 7.304-7 Reports of work.

In accordance with the instructions in § 7.404-6, the contract clause set forth therein may be inserted.

PART 8—TERMINATION OF CONTRACTS

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Contracts

A new § 8.308 has been added to provide for a limitation on settlements of those contracts containing termination clauses which do not provide for such limitation. Section 8.308 reads as follows:

§ 8.308 Limitation on settlements.

The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, shall not exceed the contract price less payments otherwise made or to be made under the contract.

Subpart G—Clauses

A new Default Clause has been added as § 8.710. Section 8.710 reads as follows:

§ 8.710 Default clause for fixed-price research and development contracts.

The following clause shall be used in all fixed-price research and development contracts as defined in § 7.301 of this chapter except contracts with educational or nonprofit institutions which are awarded on the basis of no profit:

DEFAULT

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and un-

usually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(c) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause it is determined that the failure to perform this contract or to prosecute the work so as to endanger performance of the contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph (b) of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause.

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 9—PATENTS, DATA, AND COPYRIGHTS

Subpart A—Patents

A new section, § 9.107-7 has been added, and appropriately cross-refer-

enced in §§ 9.107-2(b) and 9.107-3, to provide that contracts placed by the Department of Defense on behalf of the National Aeronautics and Space Administration will contain the NASA Patent Rights Clause in lieu of that set forth in this subchapter. The revised portions of these sections read as follows:

§ 9.107-2 License rights; domestic contracts.

(a) * * *

(b) *Contract clause.* The clause set forth below shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed within the United States, its Territories, its possessions, or Puerto Rico, except as provided in § 9.107-7 with respect to contracts on behalf of the National Aeronautics and Space Administration. See § 16.809 of this chapter for an approved form for optional use by contractors in reporting information required by paragraphs (c) (ii), (c) (iii), and (h) of the clause. In the administration of paragraph (e) of the clause, a request for conveyance of foreign rights to the Government is not required when the contractor does not file an application for patent in a foreign country under the conditions provided in that paragraph, unless the Government intends to apply for such patent.

§ 9.107-3 License rights, foreign contracts.

A patent rights clause shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed outside the United States, its Territories, its possessions, or Puerto Rico. The clause set forth below may be used except as provided in § 9.107-7 with respect to contracts on behalf of the National Aeronautics and Space Administration; however, any other clause tailored to meet requirements peculiar to foreign procurement may be used in lieu thereof provided it incorporates the principles of the clause below, except that principles of paragraphs (c) and (d) thereof may be omitted if, in the opinion of the contracting officer (on a case-by-case basis), the inclusion of withholding or other enforcement provisions is neither desirable nor necessary.

§ 9.107-7 Contracts placed for NASA.

Contracts for the National Aeronautics and Space Administration, which entail the performance of technical, scientific or engineering work shall include the NASA Property Rights in Inventions clause, in lieu of either of the Patent Rights clauses set forth in §§ 9.107-2(b) and 9.107-3. Each Department will advise its appropriate contracting activities of the current NASA clause.

Subpart B—Data and Copyrights

The limited rights provision, paragraph (i) of the clause in § 9.203-3, has been revised as follows:

§ 9.203-3 Limited rights provision for addition to basic data clause.

The paragraph set forth below shall be added to the clause set forth in

§§ 9.203-1 and 9.203-2 in negotiated contracts for supplies calling for "proprietary data" which is to be obtained subject to limitations on its use as provided for in § 9.202-2(b) (1) and the Schedule of the contract will state the extent of the "proprietary data" to be furnished subject to such limitations. This paragraph shall not be included in a contract having as one of its principal purposes experimental, developmental, or research work.

(i) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; *Provided*, When Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause; *Provided further*, Such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under United States Government Contract No. ----- and only those portions hereof which are marked (for example, by circling, underscoring or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of ----- This legend shall be marked on any reproduction hereof in whole or in part.

Provided, That such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitation.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 13—GOVERNMENT PROPERTY

Subpart F—Use of Government-Owned Industrial Facilities on Work Other Than for a Military Department

§ 13.601-1 [Amendment]

The last sentence has been deleted from § 13.601-1.

Subpart G—Use of Government-Owned Industrial Facilities and Special Tooling on Work for Foreign Governments

A new Subpart G has been added to Part 13 providing, under certain conditions, that industrial facilities and special tooling may be authorized for use, without charge, on contracts of foreign governments. Previous coverage has been deleted from § 13.601-1.

§ 13.700 Scope of subpart.

This subpart covers use by contractors of Government-owned industrial facilities and special tooling on work for a foreign government.

§ 13.701 Use without charge.

Upon the request of a foreign government, industrial facilities and special tooling located within the United States, its Territories, its possessions, or Puerto Rico, may be authorized for use, without charge, on contracts of the foreign government or subcontracts thereunder, if:

(a) Such use is approved by the Secretary or his designee;

(b) The foreign government would be authorized to place the contract with the Department concerned under the Mutual Security Act of 1954 as amended, or such use is legally authorized by an agreement with the foreign government;

(c) The foreign government's placing of the contract directly with the contractor is consistent with the best interests of the United States;

(d) Such use will not interfere with foreseeable United States requirements;

(e) Such use does not place the user in a favored competitive position; and

(f) The contractor agrees that no charge for the use of the facilities or tooling shall be included in the price charged the foreign government under the contract.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

PART 14—INSPECTION AND ACCEPTANCE

Subpart B—Acceptance

Section 14.201 is revised as follows:

§ 14.201 General.

The term "acceptance" as used in Department of Defense contracts, generally, is the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract. The Government thereby acknowledges that the supplies or services, except as provided in § 14.204-1 and subject to other terms and conditions of the contract, are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. Supplies and services shall not be accepted, however, prior to inspection (but see § 14.101). Acceptance shall ordinarily be accomplished by the execution, and delivery to the contractor, of the acceptance certificate on the applicable inspection and receiving report form (for example, DD Form 250, 1155, or Standard Form 44). Where acceptance is accomplished at a point other than destination, supplies shall not be reinspected at destination for acceptance purposes.

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

No. 198—4

PART 15—CONTRACT COST PRINCIPLES

Subpart F—Cost Interpretations

1. Section 15.601-1 has been revised as follows:

§ 15.601-1 Applicability.

The cost interpretation pertains to §§ 15.204(c), 15.204(p), and 15.403(q) and applies to contracts of which the provisions of any such paragraphs are made a part.

2. Sections 15.602-1 and 15.602-2 have been revised to indicate the cost application of the additional 20% depreciation allowance to certain assets during the year of acquisition, provided by a recent revision of the Internal Revenue Code. As revised, they read as follows:

§ 15.602-1 Applicability.

This cost interpretation pertains to §§ 15.204(d), 15.205(b) and 15.205(o). It is applicable with respect to all cost-reimbursement type contracts.

§ 15.602-2 Allowances for depreciation.

Allowances for depreciation, including additional first-year depreciation allowance, as provided in Section 167 and Section 179 of the Internal Revenue Code of 1954, subject to the limitations set forth in § 15.602-3, shall be acceptable for contract costing purposes. Allowances for "true depreciation," as that term is defined in DOD Instruction 4105.34 of 1 July 1954, shall be acceptable for contract costing purposes in accordance with said Instruction, and shall be exclusive of other methods of depreciation with respect to the assets involved in the determination of "true depreciation."

(R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202)

G. C. BANNERMAN,
Director for Procurement Policy.

OCTOBER 2, 1959.

[F.R. Doc. 59-8488; Filed, Oct. 8, 1959; 8:46 a.m.]

Chapter VII—Department of the Air Force

SUBCHAPTER B—AIRCRAFT

PART 823—PROVIDING WEATHER SERVICE TO NONMILITARY AGENCIES OR INDIVIDUALS

A new Part 823 is added as follows:

- | | |
|-------|--|
| Sec. | Responsibility. |
| 823.1 | Policy. |
| 823.2 | Guidance for providing meteorological service. |
| 823.3 | Exchanges with national meteorological services. |
| 823.4 | |

AUTHORITY: §§ 823.1 to 823.4 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.
SOURCE: AFR 105-9, December 1, 1958.

§ 823.1 Responsibility.

Service to nonmilitary agencies or individuals is the responsibility of the National Meteorological Service of the coun-

try involved. However, under certain circumstances the Air Force does provide such service. Sections 823.1 to 823.4 prescribe the conditions under which this service is provided.

§ 823.2 Policy.

(a) It is the Air Force policy to avoid encroaching on the National Meteorological Service's basic responsibility to serve the civilian population. However, when the National Meteorological Service requests AF assistance, every effort will be made to provide it.

(b) Air Weather Service units will attempt to satisfy in-flight requests for weather information received from civil pilots over air-ground communications.

§ 823.3 Guidance for providing meteorological service.

The Air Force, through the Air Weather Service, will provide meteorological service to nonmilitary agencies or individuals, in accordance with the following guidance:

(a) Pilots of aircraft authorized to use an AF facility at which an Air Weather Service detachment is located will be furnished local observations and weather information required for clearance purposes, upon request.

(b) Civilian airlines using AF bases where the Air Weather Service facility has been designated an International Civil Aviation Organization (ICAO) Main or Dependent meteorological station will be furnished local observations, clearance information, in-flight service and planning information in accordance with ICAO procedures (see §§ 822.1 to 822.17 of this chapter).

(c) Other nonmilitary agencies or individuals will be furnished requested meteorological service provided that all of the following criteria have been satisfied:

(1) The National Meteorological Service normally responsible for the service has requested that the service be provided.

(2) Military mission accomplishment will not be impaired.

(3) Additional personnel and facilities will not be required.

(4) Recipient is advised that the Air Force can assume no legal, financial, or moral responsibility for the weather service provided.

(d) Whenever a National Meteorological Service request for assistance cannot be satisfied, the Service will be advised of the reasons which preclude AF support. Requesters of service who have not cleared their request through the National Meteorological Service concerned will be advised to submit the request through that agency. However, in an emergency, where immediate action is required to avert or lessen the loss of human life and property damage, the requested service will be furnished without regard to the limitations described in this paragraph.

(e) Major air commands, attaché offices, and comparable agencies, will inform Hq USAF whenever a particular situation arises in which they feel it would be in the national or Air Force in-

terest to furnish meteorological service not otherwise authorized by §§ 823.1 to 823.4.

§ 823.4 Exchanges with national meteorological services.

Sections 823.1 to 834.4 are not intended to affect or inhibit the normal exchange of meteorological data between the Air Force and civilian meteorological services.

[SEAL] CHARLES M. McDERMOTT,
Colonel, U.S. Air Force, Deputy
Director of Administrative
Services.

[F.R. Doc. 59-8486; Filed, Oct. 8, 1959;
8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Oakland Harbor, Calif., and Lake Washington Ship Canal, Wash.

1. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.640(g) (2) is hereby amended to show the new location of the signal tower in Oakland Harbor in the vicinity of the Naval Supply Center, Oakland, California, as follows:

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.

(g) *Oakland Harbor in vicinity of Naval Supply Center, Oakland.* * * *

(2) All vessels over 1,000 tons displacement, bound for Naval Supply Center, Oakland, shall, before navigating the entrance channel, receive a signal that the channel is clear. This signal will be a black ball between sunrise and sunset and a green light at night, displayed from a yardarm on top of a signal tower which is located on top of a transit shed on the westerly end of Pier 4, Naval Supply Center.

[Regs., Sept. 28, 1959, 285/91 (Oakland Harbor, Calif.)—ENGWO] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.750(g) governing the use, administration, and navigation of Lake Washington Ship Canal, Washington, is hereby amended to change the speed limits and to clarify certain ambiguities, as follows:

§ 207.750 Puget Sound Area, Wash.

(g) *Lake Washington Ship Canal; use, administration, and navigation.* * * *

(3) *Speed.* To avoid damage to other vessels and to property along the shores,

all vessels shall proceed at reduced speed in the canal as follows:

(i) From the west entrance of the Lake Washington Ship Canal to the western end of the west guide pier of the Hiram M. Chittenden Locks, and from the east end of the easternmost guide pier of said Locks to the white flashing dolphin located south of Webster Point on Lake Washington, including all of Salmon Bay, Lake Union, Portage Bay, and Union Bay, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 7 nautical miles per hour within 200 feet of any shoreline, pier, restricted area or shore installation.

(ii) From the western end of the aforesaid west guide pier to the eastern end of the aforesaid east guide pier at said Locks, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 4 nautical miles per hour.

(iii) [Revoked]

(iv) [Revoked]

(v) [Revoked]

NOTE: Signs are located along the canal to indicate permissible speeds.

(4) *Traffic signal lights.* In addition to the lock signal lights described in subparagraph (5) (i) of this paragraph, a red light, and a green light are installed on the west side of the Ballard Bridge, on the east side of the Fremont Bridge, 1,000 feet west of the Montlake Bridge, and 1,000 feet east of the Montlake Bridge, for the guidance of vessels approaching the sections of the canal between Salmon Bay and Lake Union and between Lake Union and Lake Washington, respectively. Vessels of 300 gross tons and over and all vessels with tows, except as hereinafter provided, shall not pass the red lights. The green lights will indicate that vessels may proceed. Vessels of less than 300 gross tons without tows may disregard these signals, but they shall travel at very slow speed when passing other vessels. Vessels of 300 gross tons and over and vessels with tows, except logs, whose destination is between the Ballard Bridge and the Northern Pacific Railway Company bridge, may pass the red signals on the Ballard Bridge: Provided, such passage will not interfere with approaching traffic from Lake Union.

(5) *Approaching and passing through locks.* * * *

(iii) *Precedence at locks.* All vessels approaching the locks shall stop at the points indicated by signs placed on the canal piers or as directed by a lockman until ordered to proceed into the lock. Unless otherwise directed by the District Engineer or his authorized assistants, vessels owned or operated by the United States or the City of Seattle and passenger vessels operating on a regular schedule shall have precedence over all others in passing through the locks. Registered merchant vessels shall have precedence over pleasure craft, which shall pass through in the order of their arrival at the locks, and both shall have precedence over vessels towing floated timber or logs. Tows of floated timber and logs may be denied the use of the locks during

certain hours when both locks are busy passing other traffic. However, advance notice will be given towboat companies as to the periods when log tows will be denied lockage.

[Regs., Sept. 28, 1959, 285/91 (Lake Washington Ship Canal, Wash.)—ENGWO] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-8487; Filed, Oct. 8, 1959;
8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 19—CHEESES; PROCESSED CHEESES; CHEESE FOODS; CHEESE SPREADS, AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

Blue Cheese and Gorgonzola Cheese; Effective Date of Order Amending Standard of Identity

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055, as amended, 70 Stat. 919; 21 U.S.C. 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (22 F.R. 1045, 23 F.R. 9500), notice is hereby given that no objections were filed to the order published in the FEDERAL REGISTER of August 20, 1959 (24 F.R. 6755), and the amendments promulgated by that order will become effective on October 1, 1959.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies sec. 401, 52 Stat. 1046, as amended; 21 U.S.C. 341)

Dated: October 1, 1959.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner
of Food and Drugs.

[F.R. Doc. 59-8516; Filed, Oct. 8, 1959;
8:50 a.m.]

SUBCHAPTER C—DRUGS

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLOR- TETRACYCLINE- (OR TETRACY- CLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRA- CYCLINE) AND CHLORTETRACY- CLINE- (OR TETRACYCLINE-) CON- TAINING DRUGS

Demethylchlortetracycline

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and

Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F.R. 1045, 23 F.R. 9500), the regulations for tests and methods of assay and certification of antibiotic and antibiotic-containing drugs (21 CFR Parts 141c, 146c) are amended as follows:

1. Part 141c is amended by adding thereto the following new sections:

§ 141c.253 Demethylchlortetracycline.

(a) *Potency.* Proceed as directed in § 141c.251(a).

(b) *Toxicity.* Proceed as directed in § 141c.220(c).

(c) *Moisture.* Proceed as directed in § 141a.5(a) or § 141a.26(e) of this chapter.

(d) *pH.* Proceed as directed in § 141a.5(b) of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(e) *Absorptivity.* Proceed as directed in § 141c.220(f).

(f) *Crystallinity.* Proceed as directed in § 141a.5(c) of this chapter.

(g) *Identity.* Using the demethylchlortetracycline hydrochloride as the standard, proceed as directed in § 141c.251(g). The calculation shows a range for demethylchlortetracycline between 0.97 and 1.17.

§ 141c.254 Demethylchlortetracycline for oral suspension.

(a) *Potency.* Reconstitute as directed in the labeling. Remove an appropriate aliquot and proceed as directed in § 141c.251(a). Its potency is satisfactory if it contains not less than 85 percent of the number of milligrams that it is represented to contain.

(b) *Moisture.* Proceed as directed in § 141a.5(a) or § 141a.26(e) of this chapter.

§ 141c.255 Demethylchlortetracycline syrup (demethylchlortetracycline oral drops).

(a) *Potency.* Use an appropriate aliquot of the sample to be tested and proceed as directed in § 141c.251(a). Its potency is satisfactory if it contains not less than 85 percent of the equivalent number of milligrams of demethylchlortetracycline hydrochloride that it is represented to contain.

(b) *pH.* Using the undiluted sample, proceed as directed in § 141a.5(b) of this chapter.

(c) *Toxicity.* Proceed as directed in § 141c.217(c).

2. Part 146c is amended by adding thereto the following new sections:

§ 146c.253 Demethylchlortetracycline.

(a) *Standards of identity, strength, quality, and purity.* Demethylchlortetracycline is the hydrated or anhydrous crystalline compound of the 6-demethyl homolog of chlortetracycline or a mixture of two or more such compounds. It is so purified and dried that:

(1) Its potency is not less than 970 micrograms per milligram on the anhydrous basis.

(2) It is nontoxic.

(3) Its moisture content is not more than 7.5 percent.

(4) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 4.0 and not more than 5.5.

(5) Its absorptivity $_{1\text{ cm.}}^{1\%}$ is 387 ± 15 at 385 millimicrons.

(b) *Packaging; labeling; request for certification, check tests and assays, samples; fees.* Demethylchlortetracycline conforms to all requirements and procedures prescribed for demethylchlortetracycline hydrochloride by § 146c.251 (b), (c), (d), and (e).

§ 146c.254 Demethylchlortetracycline for oral suspension.

(a) *Standards of identity, strength, quality, and purity.* Demethylchlortetracycline for oral suspension is crystalline demethylchlortetracycline with or without suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. When the suspension is prepared as directed in its labeling, each milliliter contains a quantity of demethylchlortetracycline equivalent to not less than 15 milligrams of demethylchlortetracycline hydrochloride. Its moisture content is not more than 5 percent. The demethylchlortetracycline used conforms to the requirements of § 146c.251(a). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(b) *Packaging.* In all cases the immediate container shall be a tight container as defined by the U.S.P. The composition of the immediate container shall be such as will not cause any change in the strength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused that are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded.

(c) *Labeling.* Each package shall bear on its label or labeling, as hereinafter indicated, the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The number of milligrams of demethylchlortetracycline (expressed in terms of equivalency of demethylchlortetracycline hydrochloride) per gram.

(iii) The statement "Expiration date _____" the blank being filled in with the date that is 24 months after the month during which the batch was certified.

(iv) The statement "Caution: Federal law prohibits dispensing without prescription."

(2) On the circular or other labeling within or attached to the package, adequate directions and warnings for its use by practitioners licensed by law to administer such drug.

(d) *Request for certification; samples.* (1) In addition to complying with the requirements of § 146.2 of this chapter, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch mark and (unless

it was previously submitted) the date on which the latest assay of the demethylchlortetracycline used in making such batch was completed, the number of milligrams in each immediate container, the quantity of each ingredient used in making the batch, the date on which the latest assay of the drug comprising such batch was completed, and a statement that each ingredient used in making the batch conforms to the requirements prescribed therefor, if any, by this section.

(2) Except as otherwise provided in subparagraph (4) of this paragraph, such person shall submit in connection with his request results of the tests and assays listed after each of the following, made by him on an accurately representative sample of:

(i) The batch: Potency and moisture.

(ii) The demethylchlortetracycline used in making the batch: Potency, toxicity, moisture, pH, crystallinity, absorptivity, and identity.

(3) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection with his request, in the quantities hereinafter indicated, accurately representative samples of the following:

(i) The batch: One immediate container for each 5,000 containers in the batch, but in no case less than 5 immediate containers, unless each such container is packaged to contain more than 1.0 gram, in which case the sample shall consist of 1.0 gram for each 5,000 immediate containers in the batch, but in no case less than five 1.0-gram portions. Such samples shall be collected by taking single immediate containers or 1.0-gram portions at such intervals throughout the entire time the containers are being filled that the quantities filled during the intervals are approximately equal.

(ii) The demethylchlortetracycline used in making the batch: 10 packages, each containing approximately equal portions of not less than 250 milligrams, packaged in accordance with the requirements of § 146c.251(b).

(iii) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) The result referred to in subparagraph (2)(ii) of this paragraph and the sample referred to in subparagraph (3)(ii) of this paragraph, are not required if such result or sample has been previously submitted.

(e) *Fees.* The fees for the services rendered with respect to each batch under the regulations in this section shall be:

(1) \$4.00 for each immediate container in the samples submitted in accordance with paragraph (d)(3)(i), (ii), and (iii) of this section.

(2) If the Commissioner considers that investigations, other than examination of such immediate containers, are necessary to determine whether or not such batch complies with the requirements of § 146.3 of this chapter for the issuance of a certificate, the cost of such investigations.

The fees prescribed by subparagraph (1) of this paragraph shall accompany

the request for certification unless such fees are covered by an advance deposit maintained in accordance with § 146.8(d) of this chapter.

§ 146c.255 Demethylchlortetracycline syrup (demethylchlortetracycline oral drops).

(a) Demethylchlortetracycline syrup is a syrup that contains demethylchlortetracycline with or without one or more suitable and harmless buffer substances, suspending and stabilizing agents, and preservatives, suspended in a suitable and harmless vehicle. Each milliliter contains a quantity of demethylchlortetracycline equivalent to not less than 60 milligrams of demethylchlortetracycline hydrochloride. The pH is not less than 4.0 and not more than 5.5. The crystalline demethylchlortetracycline used conforms to the requirements of § 146c.251(a), except § 146c.251(a)(2). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(b) *Packaging.* In all cases the immediate container shall be a tight container as defined by the U.S.P. and shall be of such composition as will not cause any change in the strength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused that are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded.

(c) *Labeling.* Each package shall bear on its label or labeling, as herein-after indicated, the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The potency per milliliter expressed in terms of its equivalency of demethylchlortetracycline hydrochloride.

(iii) The statements "Warning—Not for injection" and "Shake well".

(iv) The statement "Expiration date _____," the blank being filled in with the date that is 12 months after the month during which the batch was certified.

(v) The statement "Caution: Federal law prohibits dispensing without prescription."

(2) On the circular or other labeling within or attached to the package, adequate directions and warnings for its use by practitioners licensed by law to administer such drug.

(d) *Request for certification; samples.*

(1) In addition to complying with the requirements of § 146.2 of this chapter, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch mark and (unless it was previously submitted) the date on which the latest assay of the demethylchlortetracycline used in making such batch was completed, the date on which the latest assay of the drug comprising such batch was completed, the quantity of each ingredient used in making the

batch, and a statement that each such ingredient conforms to the requirements prescribed therefor by this section.

(2) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection with his request results of the tests and assays listed after each of the following, made by him on an accurately representative sample of:

(i) The batch: Average potency per milliliter, toxicity, pH.

(ii) The demethylchlortetracycline used in making the batch: Potency, moisture, pH, crystallinity, absorptivity, and identity.

(3) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection with his request, in the quantities hereinafter indicated, accurately representative samples of the following:

(i) The batch: One package for each 5,000 packages in the batch, but in no case less than 5 packages, collected by taking single packages at such intervals throughout the entire time of packaging the batch that the quantities packaged during the intervals are approximately equal.

(ii) The demethylchlortetracycline used in making the batch: 10 packages each containing approximately equal portions of not less than 250 milligrams, packaged in accordance with the requirements of § 146c.251(b).

(iii) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) The result referred to in subparagraph (2) (i) of this paragraph and the sample referred to in subparagraph (3) (ii) of this paragraph, are not required if such result or sample has been previously submitted.

(e) *Fees.* The fees for the services rendered with respect to each batch under the regulations in this section shall be:

(1) \$4.00 for each package in the samples submitted in accordance with paragraph (d) (3) (i), (ii), and (iii) of this section.

(2) If the Commissioner considers that investigations other than examination of such packages are necessary to determine whether or not such batch complies with the requirements of § 146.3 of this chapter for the issuance of a certificate, the cost of such investigations.

The fees prescribed by subparagraph (1) of this paragraph shall accompany the request for certification unless such fees are covered by an advance deposit maintained in accordance with § 146.8(d) of this chapter.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry and since it would be against public interest to delay providing for tests and methods of assay and certification of the antibiotic drugs covered by this order.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER, since

both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: October 2, 1959.

[SEAL]

JOHN L. HARVEY,
Deputy Commissioner of
Food and Drugs.

[F.R. Doc. 59-8515; Filed, Oct. 8, 1959; 8:49 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 102—VOCATIONAL EDUCATION IN AGRICULTURE, DISTRIBUTIVE OCCUPATIONS, HOME ECONOMICS, AND TRADES AND INDUSTRIES, INCLUDING THE FISHERY TRADES AND INDUSTRY, AND IN AREA VOCATIONAL EDUCATION PROGRAMS

Miscellaneous Amendments

Part 102 of title 45 of the Code of Federal Regulations is amended to provide regulations for the administration of Area Vocational Education Programs under title III of the Act of August 1, 1946 (George-Barden Act, 60 Stat. 775; 20 USC 151 et seq.) as added by title VIII of the National Defense Education Act of 1958 (72 Stat. 1597; 20 U.S.C. 15aaa-15ggg). As amended, Part 102 provides regulations for the administration of the vocational education programs under the Smith-Hughes Act and titles I and III of the George-Barden Act, but does not include regulations for the administration of the practical nurse training program under title II of the George-Barden Act.

The following amendments consist of changes in several of the sections currently in effect and the addition of a new group of sections under the heading "Area Vocational Education Programs." The heading of Part 102 is also amended to reflect the addition of the new title III.

AUTHORITY: §§ 102.1 to 102.49 issued under 39 Stat. 929, as amended, 60 Stat. 775; 20 U.S.C. 11-15, 16-28, 151-15q; in addition, sections 102.1(c), 102.14, 102.17, 102.19(f), 102.20(c)(7), 102.23, 102.26(c), 102.32, 102.41, 102.45 (a) and (d), 102.48, 102.49, issued under 72 Stat. 1597; 20 U.S.C. 15aaa-15ggg.

1. The heading of Part 102 is amended to include reference to Area Vocational Education Programs under title III. The heading as amended reads as follows: Part 102—Vocational Education in Agriculture, Distributive Occupations, Home Economics, and Trades and Industries, Including the Fishery Trades and Industry, and in Area Vocational Education Programs.

2. Section 102.1(c) is amended to include specific reference to title III. Paragraph (c) as amended reads as follows:

§ 102.1 Definitions.

(c) "George-Barden Act" means the Act of August 1, 1946 (60 Stat. 775; 20 U.S.C. 151 et. seq.), as amended, including "Title III—Area Vocational Education Programs," as added by title VIII of the National Defense Education Act of 1958 (72 Stat. 1597; 20 U.S.C. 15aaa-15ggg), but not including, except where otherwise indicated, "Title II—Vocational Education in Practical Nurse Training," as added by title III of P.L. 911, 84th Congress (70 Stat. 925; 20 U.S.C. 15aa-15jj). Title III of the George-Barden Act will herein be referred to as "title III."

3. Section 102.14 is amended so as to be applicable only to the Smith-Hughes Act and title I of the George-Barden Act. Section 102.14, as amended, reads as follows:

§ 102.14 Reimbursement for expenditures by schools.

Under the Smith-Hughes Act and title I of the George-Barden Act, no Federal funds may be used to reimburse schools except on the basis of claims submitted for expenditures already incurred.

4. Section 102.17 is amended to provide an exception for equipment under title III. Section 102.17, as amended, reads as follows:

§ 102.17 Funds not available for certain items.

Funds may not be used under the plan for: The purchase or rental of land; the support of any religious or privately owned or conducted school or college; or the purchase, erection, preservation, or repair of buildings or equipment except as provided in § 102.45 for instructional equipment and except as provided in § 102.110 for equipment used in area vocational education programs.

5. Section 102.19 is amended by adding at the end thereof a new paragraph (f) to read as follows:

§ 102.19 Use of the various allotments.

(f) Funds appropriated under title III of the George-Barden Act are available only for area vocational education programs as provided in such title.

6. Section 102.20(c) is amended by adding at the end thereof a new subparagraph (7) to read as follows:

§ 102.20 Matching and matching purposes.

(c)

(7) Area vocational education programs under title III.

7. Section 102.23 is amended to reflect the certification and payment procedure under the Smith-Hughes and George-Barden Acts, including title III. Section 102.23 as amended reads as follows:

§ 102.23 Certification of a State to receive Federal funds.

(a) On or before the first day of January each year the Commissioner will certify the amounts of money to which each State is entitled. This certification

will be made for any given fiscal year after:

(1) It has been determined that the State has on file in the Office of Education a plan adopted by the State board and approved by the Commissioner.

(2) An examination of the records and reports on file in the Office of Education indicates that the program of vocational education for the fiscal year preceding that for which certification is considered, was carried on in good faith and in accordance with the acts and the State plan; and the Commissioner is satisfied that the State will be able to carry out the plan during the current fiscal year.

(b) Certification modification: The Commissioner may from time to time modify the amount certified for the fiscal year on the basis of periodic requests for grants, expenditure reports, audits, program reviews, reallocations, etc., or may notify the Secretary of the Treasury that further payments to a State should be withheld if there is evidence that the State is not using the Federal funds in accordance with the terms of the acts.

(c) Payment: Under the Smith-Hughes Act payments to the States will be made quarterly. Under the George-Barden Act payments will be made to the States semi-annually and at such other times as may be occasioned by the reallocation of funds. Payments will be made on the basis of the current certification of the amount to which the State is entitled for the fiscal year, taking into account necessary adjustments.

(d) Unexpended balances: Whenever any portion of the fund annually allotted to any State has not been expended for the purpose provided for in the acts, a sum equal to such portion shall be deducted from the succeeding annual allotment from such fund to such State. The procedure to be followed in the disposition of unused funds or funds not properly accounted for is to allow the unexpended balances in each or all of the several funds to remain in the State treasury. They are regarded as a part of next year's allotment due the State and payment to the State is reduced accordingly. This procedure makes it unnecessary to transfer unexpended balances from the State to the Federal treasury at the end of each fiscal year and then retransfer such balances as a part of the allotment due the State for the ensuing year.

(e) Interest earned on Federal funds paid to a State must accrue to the benefit of the United States Government. The State board is required to submit as a part of its annual fiscal report, a statement showing the amounts of Federal funds received under the several appropriations during the year covered by the report, and also, the amount of interest earned on such funds during that year. Payment of interest earned must be made to the Treasurer of the United States or reported as an unexpended balance in the annual fiscal report.

8. Section 102.26(c) is amended to take into account the provisions for the payment of salaries under title III.

Paragraph (c) of § 102.26 as amended reads as follows:

§ 102.26 State program of administration.

(c) Funds are not available for local administrative expenses, except that under title I of the George-Barden Act funds may be used to pay the salaries and necessary travel expenses of local directors and supervisors, and, under title III of the George-Barden Act funds may be used for salaries and necessary travel expenses of local school personnel, having professional responsibilities in the program.

9. Section 102.32 is amended to include reference to plan requirements for teacher training under title III. Section 102.32 as amended reads as follows:

§ 102.32 General plan provisions for teacher training.

The State plan is to include the State board's proposals for teacher training in the various fields of vocational education and under title III of the George-Barden Act with full information as to the items of expenditure to be included, the duties and qualifications of teacher trainers and other members of the teacher training staff on the professional level, and the standards for teacher training institutions and in developing and maintaining programs of such character and efficiency as are needed to provide an adequate supply of vocational teachers.

10. Section 102.41 is amended to include reference to area vocational education programs under title III. Section 102.41 as amended reads as follows:

§ 102.41 Program of vocational instruction.

The acts provide for vocational instruction in agriculture, trades and industries, home economics, distributive occupations and the fishery occupations, and in area vocational education programs. Funds may be used for instruction only when it is vocational in nature, as defined in this section, except in the case of part-time general continuation classes (see § 102.74(c)(3)). To be vocational for the purposes of the acts, instruction must be designed to fit for useful employment, and must be especially and particularly suited to the needs of those engaged or preparing to engage in a particular occupational field. Subjects which are of a general educational nature and not directed toward any specific occupational field would not be considered vocational in this sense.

11. Section 102.45(a) is amended to indicate that the 10 percent limitation on the purchase of equipment is applicable only to title I. Section 102.45(d) is amended to add a sentence at the end thereof relating to equipment purchased under title III. Paragraphs (a) and (d) of § 102.45 as amended read as follows:

§ 102.45 Use of funds for equipment and supplies for vocational instruction.

(a) Under the George-Barden Act funds may be used for the purchase or

rental of equipment and supplies for vocational instruction: *Provided, however*, That under title I, not more than 10 percent of the amount appropriated for each of the fields may be used for the purchase or rental of equipment.

(d) The Federal Government has a continuing interest in the use and disposition of property in the cost of which it has participated (whether purchased with funds derived from Federal grants or matching funds). Whenever such property is sold or no longer used for the purposes permitted under the acts, the Federal Government is to be credited with its share, 50 percent, of the value of the property at that time, the value being determined on the basis of the sale price in the case of a bona fide sale or on the fair value in the case of discontinuance of use or other diversion. In the case of equipment purchased under title III, no accountability with respect to any Federal interest is required after the termination of the Federal-State program established under such title.

12. Section 102.48 is amended so as to be applicable only to the Smith-Hughes Act and title I of the George-Barden Act. Section 102.48 as amended reads as follows:

§ 102.48 Age limitations for enrollment.

Under the Smith-Hughes Act and title I of the George-Barden Act funds may be used only for such vocational education as is designed to meet the needs of persons over 14 years of age. Since this requirement is in terms of the age level for which the education is "designed," it is interpreted to permit enrollment in classes under the plan of persons who have attained a 9th grade status as well as those who have attained the age of 14. See the relevant sections of this part for the age requirements for particular types of classes.

13. Section 102.49 is amended so as to make it applicable to title III as well as title I of the George-Barden Act. Section 102.49 as amended reads as follows:

§ 102.49 Training and work-experience training programs for out-of-school youth.

Under the George-Barden Act funds may be used for training and work-experience training programs for out-of-school youths. Expenditures for such programs from any of the various allotments under the George-Barden Act are subject to the same conditions as other expenditures made from the same allotment.

14. Part 102 is amended by adding at the end thereof the following new sections under the heading "Area Vocational Education Programs":

AREA VOCATIONAL EDUCATION PROGRAMS

- Sec.
- 102.101 Area vocational education programs.
 - 102.102 Categories.
 - 102.103 Matching funds.
 - 102.104 Special provisions regarding use of funds.
 - 102.105 General plan requirements under title III.

- Sec.
- 102.106 Approval of area vocational education programs.
 - 102.107 Geographical areas to be served.
 - 102.108 Training programs.
 - 102.109 Occupations necessary for the national defense.
 - 102.110 Instructional equipment and supplies.
 - 102.111 Transportation of students.
 - 102.112 Vocational guidance.

AUTHORITY: §§ 102.101 to 102.112 issued under 60 Stat. 775, as amended, and 72 Stat. 1602, interpret or apply sec. 801, 72 Stat. 1597, sec. 303 through 305, as added by 72 Stat. 1598, and sec. 307, as added by 72 Stat. 1600.

AREA VOCATIONAL EDUCATION PROGRAMS

§ 102.101 Area vocational education programs.

An area vocational education program operated under title III of the George-Barden Act is a program of vocational instruction, as defined in § 102.41, consisting of one or more less-than-college grade courses conducted under public supervision and control and on an organized, systematic class basis, which is made available to residents of the State or an area thereof designated and approved by the State board.

§ 102.102 Categories.

Area vocational education programs operated under title III are not considered to be under any of the separate categories of vocational education supported under the Smith-Hughes Act and titles I and II of the George-Barden Act, i.e., agriculture, distributive occupations, home economics, trades and industries and practical nursing.

§ 102.103 Matching funds.

The Act requires that there shall be spent for area vocational education programs under title III an amount of State or local funds or both at least equal to the Federal funds expended under such title. The State's financial report for the year must show the amount of State and local matching funds expended under the plan.

§ 102.104 Special provisions regarding use of funds.

The total amount of State and local funds to be spent in any year for vocational education programs operated under the provisions of the Smith-Hughes Act and titles I and II of the George-Barden Act may not be reduced below the amount of such funds expended under such programs and reported to the Commissioner for the fiscal year immediately preceding that in which the State first uses funds under title III except that such reduction below the amount expended in such preceding fiscal year may be made as long as,

(a) In making such reduction, the amount of State and local funds used to match each of the several allotments under the Smith-Hughes Act and titles I and II of the George-Barden Act is not reduced below the amount needed for dollar for dollar matching of each allotment, and

(b) An amount of State and local funds at least equal to the amount of the total reduction is to be expended under title III.

§ 102.105 General plan requirements under title III.

To be eligible to participate under title III there must be added to the State plan a new part, meeting the requirements of section 305(a) of the George-Barden Act, which sets forth the plans, policies, and methods to be followed in administering and operating area vocational education programs under title III.

§ 102.106 Approval of area vocational education programs.

The State plan is to set forth the standards and procedures which the State board will use in approving area vocational education programs. Such standards and procedures are to show how the following minimum criteria will be implemented:

(a) There is a need in the employment market for persons trained in the occupation for which training is provided.

(b) The content of the courses for which funds may be used has been determined by competent persons on the basis of an analysis of the occupation or cluster of occupations.

(c) (1) Those enrolled in the program have the necessary general educational background to benefit from the vocational instruction given in the program, and to fit them for the occupation for which the training is being given, or (2) such necessary general education, including scientific education, is available to those enrolled as part of their total curriculum.

(d) The program is of sufficient duration and there is sufficient time devoted to the technical courses in the curriculum to fit those enrolled for employment.

(e) Classrooms, shop and laboratory facilities, including instructional equipment and supplies for effective instruction are to be available.

(f) Personnel with professional and technical preparation and experience are to be employed as instructors and supervisors.

(g) A system of student selection based on interests, aptitudes, previous education and work experience is to be maintained.

(h) See § 102.108(b).

§ 102.107 Geographic areas to be served.

To qualify under title III a program must be made available to residents of the whole State or of "an area thereof designated and approved by the State board." The State plan is to set forth the policies and criteria to be used by the State board in determining that the geographic area served by a program is sufficiently extensive (e.g. with reference to such factors as population served, area served, etc.) to qualify the program as an "area vocational education program" under title III.

§ 102.108 Training programs.

Title III requires that funds "shall be used exclusively for the training of individuals designed to fit them for useful employment as highly skilled technicians in recognized occupations requiring scientific knowledge, as determined by the State board for such State, in

fields necessary for the national defense." The State plan is to set forth the procedures and criteria to be used by the State board in determining which training programs meet this requirement.

(a) *Kinds of courses.* Within the foregoing requirements and procedures, funds may be used for the following kinds of courses concerned primarily with the application of technical knowledge and technical understanding in contrast with manipulative skill:

(1) *Extension (supplementary)* courses which are designed for employed persons, including journeymen, to obtain additional training in the direct application of specialized functional aspects of science, mathematics and advanced technical skills and information required to meet the demands for highly skilled technicians in recognized occupations because of new and changing technologies. Such instruction may be organized to provide the required related instruction for apprentices.

(2) *Preparatory (preemployment)* courses which are designed to prepare persons for useful employment to meet the demands for highly skilled technicians in recognized occupations (and not for training persons for a skilled trade) which requires the direct application of specialized functional aspects of science, mathematics, and advanced technical skills and information.

(b) *Eligibility to enroll.* Any person may be permitted to enroll who has either completed the ninth grade or, regardless of his school credits, is at least 16 years of age and can reasonably be expected to profit by the instruction offered.

§ 102.109 Occupations necessary for the national defense.

Title III requires "that funds * * * shall be used exclusively * * * for the training of individuals as highly skilled technicians in recognized occupations * * * in fields necessary for the national defense." Both of the following criteria are to be used to determine occupations that are considered necessary for the national defense:

(a) The occupation will have a significant number employed, or an over-all shortage exists or is developing:

(1) In the design, development, testing, manufacture, processing, construction, installation, operation, maintenance, repair or servicing of plant facilities, equipment or products (or parts or accessories thereof) which are of importance for military or other defense activity.

(2) In providing technical services.

(b) The industry or activity in which the occupation occurs is necessary to the defense program, such as:

(1) The military.

(2) Suppliers of products or services to the military.

(3) Suppliers of products or services directly connected with defense.

(4) Scientific research.

§ 102.110 Instructional equipment and supplies.

(a) Under title III funds may be used for the purchase, rental or other acquisition,

and maintenance and repair of instructional equipment and the purchase of instructional supplies and teaching aids. (See § 102.45 of this part for regulations governing the purchase or rental of instructional equipment and supplies including teaching aids.)

(b) The State plan is to indicate how equipment and teaching aids will be accounted for. The plan is also to set forth the rules and policies to be used in the purchase and rental of equipment and supplies for area vocational education programs to assure proper expenditure and use in approved courses.

§ 102.111 Transportation of students.

(a) Necessary costs of transportation of students include only (1) transportation for one round trip per semester or shorter period determined by the duration of the program from the student's home to the place where he will reside while enrolled in the program; (2) transportation for one round trip daily between a student's place of residence and the school; (3) transportation between schools in one of which the student is enrolled in a technical program; (4) transportation between the school and the establishment where work experience is provided; and, (5) transportation of classes for field work.

(b) Transportation may be provided by common carrier, school bus, or private conveyance. Costs may not be paid in excess of costs of transportation by common carrier, or, in the absence of suitable transportation by common carrier, in excess of reasonable rates established by the State.

§ 102.112 Vocational guidance.

Costs of vocational guidance under title III include only the costs of guidance services performed in area vocational education programs for the recruitment, selection, and retention of persons for training and the placement of persons trained in such programs, and, the supervision of such guidance service. If funds are to be used for vocational guidance, that part of the plan in which area vocational education programs are described is to include a description of the plans and policies for the expenditure of funds for vocational guidance in such programs.

Dated: October 5, 1959.

[SEAL] L. G. DERTHICK,
U.S. Commissioner of Education.

Approved: October 5, 1959.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 59-8514; Filed, Oct. 8, 1959;
8:49 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed

regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner
of Internal Revenue.

The following regulations are hereby prescribed under section 1244 of the Internal Revenue Code of 1954:

- | | |
|--------------|--|
| Sec. | |
| 1.1244 (a) | Statutory provisions; losses on small business stock; general rule. |
| 1.1244 (a)-1 | Loss on small business stock treated as ordinary loss. |
| 1.1244 (b) | Statutory provisions; losses on small business stock; maximum amount for any taxable year. |
| 1.1244 (b)-1 | Annual limitation. |
| 1.1244 (c) | Statutory provisions; losses on small business stock; section 1244 stock defined. |
| 1.1244 (c)-1 | Section 1244 stock defined. |
| 1.1244 (c)-2 | Small business corporation defined. |
| 1.1244 (d) | Statutory provisions; losses on small business stock; special rules. |
| 1.1244 (d)-1 | Contributions of property having basis in excess of value. |
| 1.1244 (d)-2 | Increases in basis of section 1244 stock. |
| 1.1244 (d)-3 | Stock dividends, recapitalizations, changes in name, etc. |
| 1.1244 (d)-4 | Net operating loss deduction. |

- Sec.
1.1244 (e) Statutory provisions; losses on small business stock; regulations.
1.1244 (e)-1 Records to be kept and information to be filed with the return.

§ 1.1244(a) Statutory provisions; losses on small business stock; general rule.

Sec. 1244. *Losses on small business stock—*
(a) *General rule.* In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as a loss from the sale or exchange of an asset which is not a capital asset.

[Sec. 1244(a) as added by sec. 202(b), Small Business Tax Revision Act 1958 (72 Stat. 1676)]

§ 1.1244(a)-1 Loss on small business stock treated as ordinary loss.

(a) *In general.* Subject to certain conditions and limitations, section 1244 provides that a loss on the sale or exchange (including a transaction treated as a sale or exchange, such as worthlessness) of "section 1244 stock" which would otherwise be treated as a loss from the sale or exchange of a capital asset shall be treated as a loss from the sale or exchange of an asset which is not a capital asset (referred to in this section and §§ 1.1244(b)-1 to 1.1244(e)-1, inclusive, as an "ordinary loss"). Such a loss shall be allowed as a deduction from gross income in arriving at adjusted gross income. The requirements that must be satisfied in order that stock may be considered section 1244 stock are described in §§ 1.1244(c)-1 and 1.1244(c)-2. These requirements relate to the stock itself and the corporation issuing such stock. In addition, the taxpayer who claims an ordinary loss deduction pursuant to section 1244 must satisfy the requirements of paragraph (b) of this section.

(b) *Taxpayers entitled to ordinary loss.* The allowance of an ordinary loss deduction for a loss on section 1244 stock is permitted only to the following two classes of taxpayers:

- (1) An individual sustaining the loss to whom such stock was issued by a small business corporation, or
- (2) An individual who is a partner in a partnership at the time the partnership acquired such stock in an issuance from a small business corporation and whose distributive share of partnership items reflects the loss sustained by the partnership.

In order to claim a deduction under section 1244 the individual, or the partnership, sustaining the loss, must have continuously held the stock from the date of issuance. A corporation, trust, or estate is not entitled to ordinary loss treatment under section 1244 regardless of how the stock was acquired. An individual who acquires stock from a shareholder by purchase, gift, devise, or in any other manner is not entitled to an ordinary loss under section 1244 with respect to such stock. Thus, ordinary loss treatment is not available to a partner to whom the stock is distributed by the partnership. Stock acquired through an investment banking firm, or other per-

son, participating in the sale of an issue may qualify for ordinary loss treatment only if the stock is not first issued to such firm or person. Thus, for example, if the firm acts as a selling agent for the issuing corporation the stock may qualify. On the other hand, stock purchased by an investment firm and subsequently resold does not qualify as section 1244 stock in the hands of the person acquiring the stock from the firm.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). A and B, both individuals, and C, a trust, are equal partners in a partnership to which a small business corporation issues section 1244 stock. The partnership sells the stock at a loss. A's and B's distributive share of the loss may be treated as an ordinary loss pursuant to section 1244, but C's distributive share of the loss may not be so treated.

Example (2). The facts are the same as in example (1) except that the section 1244 stock is distributed by the partnership to partner A and he subsequently sells the stock at a loss. Section 1244 is not applicable to the loss since A did not acquire the stock by issuance from the small business corporation.

§ 1.1244(b) Statutory provisions; losses on small business stock; maximum amount for any taxable year.

Sec. 1244. *Losses on small business stock.*

(b) *Maximum amount for any taxable year.* For any taxable year the aggregate amount treated by the taxpayer by reason of this section as a loss from the sale or exchange of an asset which is not a capital asset shall not exceed—

- (1) \$25,000, or
- (2) \$50,000, in the case of a husband and wife filing a joint return for such year under section 6013.

[Sec. 1244(b) as added by sec. 202(b), Small Business Tax Revision Act 1958 (72 Stat. 1676)]

§ 1.1244(b)-1 Annual limitation.

Subsection (b) of section 1244 imposes a limitation on the aggregate amount of loss which for any taxable year may be treated as an ordinary loss by a taxpayer by reason of that section. The aggregate amount which may be so treated shall not exceed \$25,000, except that in the case of a husband and wife who file a joint return under section 6013 for the taxable year during which the losses are sustained, the limitation on the aggregate amount of loss for such taxable year is \$50,000. Any amount of loss in excess of the applicable limitation is to be treated as loss from the sale or exchange of a capital asset.

§ 1.1244(c) Statutory provisions; losses on small business stock; section 1244 stock defined.

Sec. 1244. *Losses on small business stock.*

(c) *Section 1244 stock defined—*(1) *In general.* For purposes of this section, the term "section 1244 stock" means common stock in a domestic corporation if—

(A) Such corporation adopted a plan after June 30, 1958, to offer such stock for a period (ending not later than two years after the date such plan was adopted) specified in the plan,

(B) At the time such plan was adopted, such corporation was a small business corporation,

(C) At the time such plan was adopted, no portion of a prior offering was outstanding,

(D) Such stock was issued by such corporation, pursuant to such plan, for money or other property (other than stock and securities), and

(E) Such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock is sustained (or if such corporation has not been in existence for 5 taxable years ending before such date, during the period of its taxable years ending before such date, or if such corporation has not been in existence for one taxable year ending before such date, during the period such corporation has been in existence before such date), derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account for purposes of this subparagraph only to the extent of gains therefrom); except that this subparagraph shall not apply with respect to any corporation if, for the period referred to, the amount of the deductions allowed by this chapter (other than by sections 172, 242, 243, 244, and 245) exceed the amount of gross income.

Such term does not include stock if issued (pursuant to the plan referred to in subparagraph (A)) after a subsequent offering of stock has been made by the corporation.

(2) *Small business corporation defined.* For purposes of this section, a corporation shall be treated as a small business corporation if at the time of the adoption of the plan—

- (A) The sum of—
 - (i) The aggregate amount which may be offered under the plan, plus
 - (ii) The aggregate amount of money and other property (taken into account in an amount, as of the time received by the corporation, equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liabilities to which the property was subject or which were assumed by the corporation at such time) received by the corporation after June 30, 1958, for stock, as a contribution to capital, and as paid-in surplus,

does not exceed \$500,000; and

- (B) The sum of—
 - (i) The aggregate amount which may be offered under the plan, plus
 - (ii) The equity capital of the corporation (determined on the date of the adoption of the plan),

does not exceed \$1,000,000.

For purposes of subparagraph (B), the equity capital of a corporation is the sum of its money and other property (in an amount equal to the adjusted basis of such property for determining gain), less the amount of its indebtedness (other than indebtedness to shareholders).

[Sec. 1244(c) as added by sec. 202(b), Small Business Tax Revision Act 1958 (72 Stat. 1676)]

§ 1.1244(c)-1 Section 1244 stock defined.

(a) *In general.* In order that stock may qualify as section 1244 stock the requirements described in paragraphs (b) through (h) of this section must be satisfied. Except for the requirement in paragraph (g) of this section, the determination as to whether such requirements are met may be made at or before the time the stock is issued. The determination as to whether the requirement set forth in paragraph (g) of this section, relating to gross receipts of the corporation, has been satisfied may be made only at the time a loss is sustained on the stock. Therefore, at the time

of issuance it cannot be said with certainty that the stock would qualify for the benefits of section 1244.

(b) *Common stock.* Only common stock, either voting or nonvoting, in a domestic corporation may qualify as section 1244 stock. For purposes of section 1244, neither securities of the corporation convertible into common stock nor common stock convertible into other securities of the corporation shall be treated as common stock. For definition of domestic corporation see section 7701(a)(4) and the regulations thereunder.

(c) *Written plan.* (1) The common stock must be issued pursuant to a written plan adopted by the corporation after June 30, 1958, to offer only such stock during a period specified in the plan ending not later than two years after the date the plan is adopted. The two-year requirement referred to in the preceding sentence will be met if the period specified in the plan is based upon the date when, under the rules or regulations of a Government agency relating to the issuance of the stock, the stock may lawfully be sold, and it is clear that such period will end, and in fact it does end, within two years after the plan is adopted. The plan must specifically state, in terms of dollars, the maximum amount to be received by the corporation in consideration for the stock to be issued pursuant thereto. See § 1.1244(c)-2 for the limitation on the amount that may be received by the corporation under the plan. For purposes of section 1244, an increase in the basis of outstanding stock as a result of a contribution to capital is not an issuance of stock.

(2) To qualify, the stock must be issued during the period of the offer, which period must end not later than two years after the date the plan is adopted. Stock which is subscribed for during the period of the plan but not issued during such period cannot qualify as section 1244 stock. Stock issued on the exercise of a stock right, stock warrant, or stock option (which right, warrant, or option was not outstanding at the time the plan was adopted) will be treated as issued pursuant to a plan only if the right, warrant, or option is applicable solely to unissued stock offered under the plan and is exercised during the period of the plan.

(3) Stock subscribed for prior to the adoption of the plan, including stock subscribed for prior to the date the corporation comes into existence, may be considered issued pursuant to a plan adopted by the corporation if the stock is not in fact issued prior to the adoption of such plan.

(4) Stock issued for a payment which, alone or together with prior payments, exceeds the maximum amount that may be received under the plan, is not considered issued pursuant to the plan, and none of such stock can qualify as section 1244 stock. See example (2) in § 1.1244(c)-2(d).

(d) *Small business corporation.* At the time the plan is adopted the corporation must be a "small business corporation". See § 1.1244(c)-2 for the definition of a small business corporation.

(e) *Prior offering.* At the time the plan is adopted no portion of a prior offering of stock may be outstanding. Thus, if any portion of an offering of common or preferred stock is outstanding at the time of the adoption of the plan, stock issued under the plan will not qualify as section 1244 stock. Stock rights, stock warrants, stock options, or securities convertible into stock which are outstanding at the time the plan is adopted are deemed to be prior offerings. The authorization in the corporate charter to issue stock different from stock offered under the plan or in excess of stock offered under the plan of itself is not a prior offering.

(f) *Issued for money or other property.* (1) The stock must be issued to the taxpayer for money or other property transferred by the taxpayer to the corporation. However, stock issued in exchange for stock or securities, including stock or securities of the issuing corporation, cannot qualify as section 1244 stock, except as provided in § 1.1244(d)-3, relating to certain cases where stock is issued in exchange for section 1244 stock. Stock issued for services rendered or to be rendered to, or for the benefit of, the issuing corporation does not qualify as section 1244 stock. Accordingly, stock issued upon the exercise of a stock option granted to employees of such corporation will not qualify as section 1244 stock to the extent that it represents stock issued for services rendered or to be rendered. Also, stock issued for a convertible security upon exercise of the conversion privilege does not qualify as section 1244 stock. Stock issued in consideration for cancellation of indebtedness of the corporation shall be considered issued in exchange for money or other property unless such indebtedness is evidenced by a security, or arises out of the performance of personal services.

(2) The following examples illustrate situations where stock fails to qualify as section 1244 stock as a result of the rules in subparagraph (1) of this paragraph:

Example (i). A taxpayer owns stock of Corporation X issued to him prior to July 1, 1958. Under a plan adopted after June 30, 1958, he exchanges his stock for a new issuance of stock of Corporation X. The stock received by the taxpayer in the exchange may not qualify as section 1244 stock even if the corporation has adopted a valid plan and is a small business corporation.

Example (ii). A taxpayer owns stock in Corporation X. Corporation X merges into Corporation Y. In exchange for his stock, Corporation Y issues shares of its stock to the taxpayer. The stock in Corporation Y does not qualify as section 1244 stock even if the stock exchanged by the taxpayer did qualify.

Example (iii). Corporation X transfers part of its business assets to Corporation Y, a new corporation, and all of the stock of Corporation Y is issued directly to the shareholders of Corporation X. Since the Corporation Y stock was not issued to the shareholders for a transfer by them of money or other property, none of the Corporation Y stock in the hands of the shareholders can qualify.

(g) *Gross receipts.* (1) (i) (a) Except as provided in subparagraph (2) of this paragraph, stock will not qualify under

section 1244 unless more than 50 percent of the gross receipts of the corporation for the period consisting of the five most recent taxable years of the corporation ending before the date the loss on such stock is sustained by the shareholders is derived from sources other than royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities. If the corporation has not been in existence for five taxable years ending before such date, the percentage test referred to in the preceding sentence applies to the period of the taxable years ending before such date during which the corporation has been in existence; and if the loss is sustained during the first taxable year of the corporation such test applies to the period beginning with the first day of such taxable year and ending on the day before the loss is sustained. The test under this paragraph shall be made on the basis of total gross receipts, except that gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom. The term "gross receipts" as used in section 1244(c)(1)(E) is not synonymous with "gross income". Gross receipts means the total amount received or accrued under the method of accounting used by the corporation in computing its taxable income. Thus, the total amount of receipts is not reduced by returns and allowances, cost, or deductions. For example, gross receipts will include the total amount received or accrued during the corporation's taxable year from the sale or exchange of any kind of property, from investments, and for services rendered by the corporation. However, gross receipts do not include amounts received in nontaxable sales or exchanges, except to the extent that gain is recognized by the corporation, nor does that term include amounts received as a loan, as a repayment of a loan, as a contribution to capital, or on the issuance by the corporation of its own stock.

(b) The meaning of the term "gross receipts" as used in section 1244(c)(1)(E) may be further illustrated by the following examples:

Example (1). A corporation on the accrual basis sells property and receives payment partly in money and partly in the form of a note payable at a future time. The amount of the money and the face amount of the note would be considered gross receipts in the taxable year of the sale and would not be reduced by the adjusted basis of the property, the costs of sale, or any other amount.

Example (2). A corporation has a long-term contract as defined in paragraph (a) of § 1.451-3 with respect to which it reports income according to the percentage-of-completion method as described in paragraph (b)(1) of § 1.451-3. The portion of the gross contract price which corresponds to the percentage of the entire contract which has been completed during the taxable year shall be included in gross receipts for such year.

Example (3). A corporation which regularly sells personal property on the installment plan elects to report its taxable income on the installment method in accordance with section 453. The installment payments actually received in a given taxable year of the corporation shall be included in gross receipts for such year.

(ii) The term "royalties" as used in subdivision (i) of this subparagraph

means all royalties, including mineral, oil, and gas royalties (whether or not the aggregate amount of such royalties constitutes 50 percent or more of the gross income of the corporation for the taxable year), and amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property. However, the provisions of sections 631 (b) and (c) and 1235 are applicable in determining whether payments with respect to timber, coal, or patents are royalties for purposes of this subdivision. For the definition of "mineral, oil, or gas royalties", see paragraph (b)(11) (ii) and (iii) of § 1.543-1. For purposes of this subdivision, the gross amount of royalties shall not be reduced by any part of the cost of the rights under which they are received or by any amount allowable as a deduction in computing taxable income.

(iii) The term "rents" as used in subdivision (i) of this subparagraph means amounts received for the use of, or right to use, property (whether real or personal) of the corporation, whether or not such amounts constitute 50 percent or more of the gross income of the corporation for the taxable year. The term "rents" does not include payments for the use or occupancy of rooms or other space where significant services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist homes, motor courts, or motels. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such services; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies, the collection of trash, etc., are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in an office building, etc., are generally "rents" under section 1244(c)(1) (E). Payments for the parking of automobiles ordinarily do not constitute rents. Payments for the warehousing of goods or for the use of personal property do not constitute rents if significant services are rendered in connection with such payments.

(iv) The term "dividends" as used in subdivision (i) of this subparagraph includes dividends as defined in section 316, amounts required to be included in gross income under section 551 (relating to foreign personal holding company income taxed to United States shareholders), and consent dividends determined as provided in section 565.

(v) The term "interest" as used in subdivision (i) of this subparagraph means any amounts received for the use of money (including tax-exempt interest).

(vi) The term "annuities" as used in subdivision (i) of this subparagraph means the entire amount received as an annuity under an annuity, endowment, or life insurance contract, regardless of whether only part of such amount would be includible in gross income under section 72.

(vii) For purposes of subdivision (i) of this subparagraph, gross receipts from the sales or exchanges of stock or securities are taken into account only to the extent of gains therefrom. Thus, the gross receipts from the sale of a particular share of stock will be the excess of the amount realized over the adjusted basis of such share. If the adjusted basis should equal or exceed the amount realized on the sale or exchange of a certain share of stock, bond, etc., there would be no gross receipts resulting from the sale of such security. Losses on sales or exchanges of stock or securities do not offset gains on the sales or exchanges of other stock or securities for purposes of computing gross receipts from such sales or exchanges. Gross receipts from the sale or exchange of stocks and securities include gains received from such sales or exchanges by a corporation even though such corporation is a regular dealer in stocks and securities. For the meaning of the term "stocks or securities", see paragraph (b)(5)(i) of § 1.543-1.

(2) The requirement of subparagraph (1) of this paragraph need not be satisfied if for the applicable period the aggregate amount of deductions allowed to the corporation exceeds the aggregate amount of its gross income. But for this purpose the deductions allowed by section 172, relating to the net operating loss deduction, and by sections 242, 243, 244, and 245, relating to certain special deductions for corporations, shall not be taken into account.

(3) In applying subparagraphs (1) and (2) of this paragraph to a successor corporation in a reorganization described in section 368(a)(1)(F), such corporation shall be treated as the same corporation as its predecessor. See paragraph (d)(2) of § 1.1244(d)-3.

(h) *Subsequent offering.* (1) Even though the plan satisfies the requirements of paragraph (c) of this section, if another offering of stock is made by the corporation subsequent to, or simultaneous with, the adoption of the plan, stock issued pursuant to the plan after such other offering shall not qualify as section 1244 stock. The issuance of stock options, stock rights, or stock warrants, at any time during the period of the plan, which are exercisable with respect to stock other than stock offered under the plan, shall be considered a subsequent offering. Likewise, the issuance of stock other than that offered under the plan shall be considered a subsequent offering. Since stock issued upon exercise of a conversion privilege is stock issued for a security, it is not stock which can be offered under a plan, and, therefore, the issuance at any time during the period of the plan of securities convertible into stock shall be considered to be a subsequent offering. Stock issued under the

plan before a subsequent offering is not disqualified by reason of such subsequent offering. The rule of this paragraph, together with the rule of paragraph (e) of this section, relating to offers prior to the adoption of the plan, limits section 1244 stock to stock issued by the corporation during a period when any stock issued by it must have been issued pursuant to the plan.

(2) Any modification of a plan that changes the offering to include preferred stock, or that increases the amount of stock that may be issued thereunder to such an extent that the requirements of section 1244(c)(1)(B) would not have been satisfied if determined with reference to such amount, or that extends the period of time during which stock may be issued thereunder to more than two years from the date such plan was initially adopted, shall be considered a subsequent offering and no stock issued thereafter may qualify. However, a corporation may withdraw a plan and adopt a new plan to issue stock. To determine whether stock issued pursuant to such new plan may qualify, section 1244(c) must be applied with respect to the new plan as of the date of its adoption. For example, amounts received for stock under the prior plan must be taken into account in determining whether the requirements of section 1244(c)(2), relating to definition of small business corporation, are satisfied. In applying the requirements of section 1244(c)(2)(B), reference should be made to equity capital as of the date the new plan is adopted. The same principles apply if the period of the initial plan expires and the corporation adopts a new plan.

§ 1.1244(c)-2 Small business corporation defined.

(a) *In general.* To be treated as a small business corporation, the corporation which intends to issue the stock pursuant to a plan described in paragraph (c) of § 1.1244(c)-1 must be a domestic corporation and must, at the time the plan is adopted, meet certain requirements. These requirements are described in paragraphs (b) and (c) of this section. Since the requirements must be satisfied only at the time the plan to issue stock is adopted, it is possible that a loss on stock may be treated as an ordinary loss under section 1244 even though the corporation could not qualify as a small business corporation at the time such stock was issued or at the time the loss was sustained.

(b) *Amount received by corporation for stock.* (1) At the time of the adoption of the plan the sum of the aggregate dollar amount to be paid for stock which may be offered under the plan plus the aggregate amount of money and other property which has been received by the corporation after June 30, 1958, for its stock, as a contribution to capital, and as paid-in surplus must not exceed \$500,000. In making these determinations (i) property is taken into account at its adjusted basis to the corporation (for determining gain) as of the date received by the corporation, and (ii) such aggregate amount is reduced by

the amount of any liability to which the property was subject and by the amount of any liabilities which were assumed by the corporation at such time.

(2) For purposes of the \$500,000 test referred to in subparagraph (1) of this paragraph, the total amount of money and other property received for stock, as a contribution to capital, and as paid-in surplus shall not be reduced by distributions to shareholders, even though such distributions are capital distributions. Thus, once the total of such amount received after June 30, 1958, reaches \$500,000, the corporation is precluded from subsequently adopting a plan under which section 1244 stock may be issued.

(c) *Equity capital.* The sum of the aggregate dollar amount to be paid for stock which may be offered under the plan plus the equity capital of the corporation (determined on the date of the adoption of the plan) may not exceed \$1,000,000. For this purpose, equity capital is the sum of its money and other property (in an amount equal to its adjusted basis for determining gain) less the amount of the corporation's indebtedness to persons other than its shareholders.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation W comes into existence on December 1, 1958. On that date the corporation may adopt a plan to issue common stock for an amount (determined under paragraph (b) of this section) not in excess of \$500,000 during a period ending not later than November 30, 1960. Such corporation will qualify as a small business corporation as of the date that the plan is adopted. However, if the corporation adopts a plan to issue stock for an amount in excess of \$500,000 it is not a small business corporation at the time the plan is adopted and no stock issued under the plan may qualify as section 1244 stock. If the cost of organizing Corporation W amounted to \$1,000 and constituted paid-in surplus or a contribution to capital, such amount must be taken into account in determining the amount that may be received under the plan, with the result that only \$499,000 may be so received.

Example (2). On December 1, 1958, Corporation X, a newly formed corporation, adopts a plan to issue common stock for an amount (determined under paragraph (b) of this section) not in excess of \$500,000 during a period ending not later than November 30, 1960. By January 1, 1960, the corporation has, pursuant to the plan, issued at par, stock having an aggregate par value of \$400,000, \$200,000 of which was issued for \$200,000 cash, and \$200,000 of which was issued for property (other than stock or securities) having a basis to the corporation of \$100,000 and a fair market value of \$200,000. The corporation may, prior to November 30, 1960, issue stock for an amount not in excess of \$200,000 cash or property having a basis to it not in excess of \$200,000. Stock issued for any payment which, alone or together with any payments received after January 1, 1960, exceeds such \$200,000 amount would not qualify as section 1244 stock because it would not be issued pursuant to the plan.

Example (3). Assume that on December 1, 1958, Corporation Y, a newly formed corporation, adopts a plan to issue common stock for an amount (determined under paragraph (b) of this section) not in excess of \$500,000 during a period ending not

later than November 30, 1960. By January 1960 the corporation has received \$400,000 cash for stock issued pursuant to the plan, but due to business successes the equity capital of the corporation exceeds \$1,000,000. Since the equity capital test is made as of the date that the plan is adopted, the corporation may still, prior to November 30, 1960, issue section 1244 stock pursuant to the plan until the full amount specified in the plan has been received.

Example (4). Subsequent to June 30, 1958, Corporation Z receives a total of \$600,000 cash on the issuance of its stock. In 1960 Corporation Z redeems shares of its stock for the total amount of \$300,000 and the redemptions reduce Corporation Z's capital to substantially less than \$500,000. Notwithstanding the redemptions, stock subsequently issued by Corporation Z will not qualify as section 1244 stock because the \$500,000 limitation of section 1244(c) (2) (A) has been previously exceeded.

§ 1.1244(d) Statutory provisions; losses on small business stock; special rules.

Sec. 1244. Losses on small business stock.

(d) *Special rules.*—(1) *Limitations on amount of ordinary loss.*—(A) *Contributions of property having basis in excess of value.* If—

(i) Section 1244 stock was issued in exchange for property,

(ii) The basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) The adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) *Increases in basis.* In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) *Recapitalizations, changes in name, etc.* To the extent provided in regulations prescribed by the Secretary or his delegate, common stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c) (1) (other than subparagraph (E) thereof), or which is received in a reorganization described in section 368(a) (1) (F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1) (E) and (2) (A) of subsection (c), a successor corporation in a reorganization described in section 368(a) (1) (F) shall be treated as the same corporation as its predecessor.

(3) *Relationship to net operating loss deduction.* For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as a loss from the sale or exchange of an asset which is not a capital asset shall be treated as attributable to a trade or business of the taxpayer.

(4) *Individual defined.* For purposes of this section, the term "individual" does not include a trust or estate.

[Sec. 1244(d) as added by sec. 202(b), Small Business Tax Revision Act 1958 (72 Stat. 1676)]

§ 1.1244(d)-1 Contributions of property having basis in excess of value.

(a) *In general.* (1) Section 1244(d) (1) (A) provides a special rule which limits the amount of loss on section 1244 stock that may be treated as an ordinary loss. This rule applies only when section 1244 stock is issued by a corporation in exchange for property that, immediately before the exchange, has an adjusted basis (for determining loss) in excess of its fair market value. If section 1244 stock is issued in exchange for such property and the basis of such stock in the hands of the taxpayer is determined by reference to the basis of such property, then for purposes of section 1244, the basis of such stock shall be reduced by an amount equal to the excess, at the time of the exchange, of the adjusted basis of the property over its fair market value.

(2) The provisions of section 1244(d) (1) (A) do not affect the basis of stock for purposes other than section 1244. Such provisions are to be used only in determining the portion of the total loss sustained that may be treated as an ordinary loss pursuant to section 1244.

(b) *Transfer of more than one item.* If a taxpayer exchanges several items of property for stock in a single transaction so that the basis of the property transferred is allocated evenly among the shares of stock received, the computation under this section should be made by reference to the aggregate fair market value and the aggregate basis of the property transferred.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). B transfers property with an adjusted basis of \$1,000 and a fair market value of \$250 to a corporation for 10 shares of section 1244 stock in an exchange that qualifies under section 351. The basis of B's stock is \$1,000 (\$100 per share), but, solely for purposes of section 1244, the total basis of the stock must be reduced by \$750, the excess of the adjusted basis of the property exchanged over its fair market value. Thus, the basis of such stock for purposes of section 1244 is \$250 and the basis of each share for such purposes is \$25. If B sells his 10 shares for \$250, he will recognize a loss of \$750, all of which must be treated as a capital loss. If he sells the 10 shares for \$200, then \$50 of his total loss of \$800 will be treated as an ordinary loss under section 1244, assuming the various requirements of such section are satisfied, and the remaining \$750 will be a capital loss.

Example (2). B owns property with a basis of \$20,000. The fair market value of the property unencumbered is \$15,000 but the property is subject to a \$2,000 mortgage. B transfers the encumbered property to a corporation for 100 shares of section 1244 stock in an exchange that qualifies under section 351. The basis of the shares, determined in accordance with section 358, is \$18,000 or \$180 per share, but solely for purposes of section 1244 the basis is \$13,000 (\$130 per share), which is its basis for purposes other than section 1244, reduced by \$5,000, the excess of the adjusted basis, immediately before the exchange, of the property transferred over its fair market value.

Example (3). C transfers business assets to a corporation for 100 shares of section 1244 stock in an exchange that qualifies under section 351. The assets transferred are as follows:

	Basis	Fair market value
Cash-----	\$10,000	\$10,000
Inventory-----	15,000	30,000
Depreciable property---	50,000	20,000
Land-----	25,000	10,000
	100,000	70,000

The basis for the shares received by C is \$100,000, which is applied \$1,000 to each share. However, the basis of the shares for purposes of section 1244 is \$70,000 (\$700 per share), the basis for general purposes reduced by \$30,000, the excess of the aggregate adjusted basis of the property transferred over the aggregate fair market value of such property.

§ 1.1244(d)-2 Increases in basis of section 1244 stock.

(a) *In general.* If subsequent to the time of its issuance there is for any reason, including the operation of section 1376(a), an increase in the basis of section 1244 stock, such increase shall be treated as allocable to stock which is not section 1244 stock. Therefore, a loss on stock, the basis of which has been increased subsequent to its issuance, must be apportioned between the part that qualifies as section 1244 stock and the part that does not so qualify. Only the loss apportioned to the part that so qualifies may be treated as an ordinary loss pursuant to section 1244. The amount of loss apportioned to the part that qualifies is the amount which bears the same ratio to the total loss as the basis of the stock which is treated as allocated to section 1244 stock bears to the total basis of the stock.

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. For \$10,000 a corporation issues 100 shares of section 1244 stock to X. X later contributes \$2,000 to the capital of the corporation and this increases the total basis of his 100 shares to \$12,000. Subsequently, he sells the 100 shares for \$9,000. Of the \$3,000 loss, \$2,500 is allocated to the portion of the stock that qualifies as section 1244 stock $\left(\frac{\$10,000}{\$12,000} \text{ of } \$3,000\right)$, and the remaining \$500 is allocated to the portion of the stock that does not so qualify. Therefore, to the extent of \$2,500, the loss may be treated as an ordinary loss assuming the various requirements of section 1244 stock are satisfied. However, the remaining \$500 loss must be treated as a capital loss.

§ 1.1244(d)-3 Stock dividends, recapitalizations, changes in name, etc.

(a) *In general.* Section 1244(c)(1) provides that stock may not qualify for the benefits of section 1244 unless it is issued to the taxpayer for money or other property not including stock or securities. However, section 1244(d)(2) authorizes exceptions to this rule. The exceptions may apply in three situations: (1) The receipt of a stock dividend; (2) the exchange of stock for stock pursuant to a reorganization described in section 368(a)(1)(E); and (3) the exchange of stock for stock pursuant to a reorganization described in section 368(a)(1)(F).

(b) *Stock dividends.* (1) If common stock is received by an individual or partnership in a nontaxable distribution

under section 305(a) made solely with respect to stock owned by such individual or partnership which meets the requirements of section 1244 stock determinable at the time of the distribution, then the common stock so received will also be treated as meeting such requirements. For purposes of this paragraph and paragraphs (c) and (d) of this section, the requirements of section 1244 stock determinable at the time of the distribution or exchange are all of the requirements of section 1244(c)(1) other than the one described in subparagraph (E) thereof, relating to the gross receipts test.

(2) If, however, such stock dividend is received by such individual or partnership partly with respect to stock meeting the requirements of section 1244 stock determinable at the time of the distribution, and partly with respect to stock not meeting such requirements, then only part of the stock received as a stock dividend will be treated as meeting such requirements. Assuming all the shares with respect to which the dividend is received have equal rights to dividends, such part is the number of shares which bears the same ratio to the total number of shares received as the number of shares owned immediately before the stock dividend which meets such qualifications bears to the total number of shares with respect to which the stock dividend is received. In determining the basis of shares received in the stock dividend and of the shares held before the stock dividend, section 307 shall apply as if two separate nontaxable stock dividends were made, one with respect to the shares that meet the requirements and the other with respect to shares that do not meet the requirements.

(3) The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (i). Corporation X issues 100 shares of its common stock to B for \$1,000. Subsequently, in a nontaxable stock dividend B receives 5 more shares of common stock of Corporation X. If the 100 shares meet all the requirements of section 1244 stock determinable at the time of the distribution of the stock dividend, the 5 additional shares shall also be treated as meeting such requirements.

Example (ii). In 1959, Corporation Y issues 100 shares of its common stock to C for \$1,000 and these shares meet the requirements of section 1244 stock determinable at the time of the issuance. In 1960, C purchases an additional 200 shares of such stock from another shareholder for \$3,000; however, these shares do not meet the requirements of section 1244 stock because they were not originally issued to C by the corporation. In 1961, C receives 15 shares of Corporation Y common stock as a stock dividend. Of the shares received, 5 shares, the number received with respect to the 100 shares of stock which met the requirements of section 1244 at the time of the distribution, i.e., $\frac{100}{300} \times 15$, shall also be treated as meeting such requirements. The remaining 10 shares do not meet such requirements as they are not received with respect to section 1244 stock. The basis of such 5 shares is determined by applying section 307 as if the 5 shares were received as a separate stock dividend made solely with respect to shares that meet the requirements of section

1244 stock at the time of the distribution. Thus, the basis of the 5 shares is \$47.61 $\left(\frac{5}{105} \text{ of } \$1,000\right)$.

(c) *Recapitalizations.* (1) If, pursuant to a recapitalization described in section 368(a)(1)(E), common stock of a corporation is received by an individual or partnership in exchange for stock of such corporation meeting the requirements of section 1244 stock determinable at the time of the exchange, such common stock shall be treated as meeting such requirements.

(2) If common stock is received pursuant to such a recapitalization partly in exchange for stock meeting the requirements of section 1244 stock determinable at the time of the exchange and partly in exchange for stock not meeting such requirements, then only part of such common stock will be treated as meeting such requirements. Such part is the number of shares which bears the same ratio to the total number of shares of common stock so received as the basis of the shares transferred which meet such requirements bears to the basis of all the shares transferred for such common stock. The basis allocable, pursuant to section 358, to the common stock which is treated as meeting such requirements is limited to the basis of stock that meets such requirements transferred in the exchange.

(3) The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (i). A owns 500 shares of voting common stock of Corporation X. Corporation X revises its capital structure to provide for two classes of common stock: Class A voting and Class B nonvoting. In a recapitalization described in subparagraph (E) of section 368(a)(1), A exchanges his 500 shares for 750 shares of Class B nonvoting stock. If the 500 shares meet all the requirements of section 1244 stock determinable at the time of the exchange, the 750 shares received in the exchange are treated as meeting such requirements.

Example (ii). B owns 500 shares of common stock of Corporation X with a basis of \$5,000, and 100 shares of preferred stock of that corporation with a basis of \$2,500. Pursuant to a recapitalization described in section 368(a)(1)(E), B exchanges all of his shares for 900 shares of common stock of Corporation X. The 500 common shares meet the requirements of section 1244 stock determinable at the time of the exchange, but the 100 preferred shares do not meet such requirements since only common stock may qualify. Of the 900 common shares received, 600 shares $\left(\frac{\$5,000}{\$7,500} \times 900 \text{ shares}\right)$ are treated as meeting the requirements of section 1244 stock at the time of the exchange, because they are deemed to be received in exchange for the 500 common shares which met such requirements. The remaining 300 shares do not meet such requirements as they are not deemed to be received in exchange for section 1244 stock. The basis of the 600 shares is \$5,000, the basis of the relinquished shares meeting the requirements of section 1244.

(d) *Change of name, etc.* (1) If, pursuant to a reorganization described in section 368(a)(1)(F), common stock of a successor corporation is received by an individual or partnership in exchange for stock of the predecessor corporation

meeting the requirements of section 1244 stock determinable at the time of the exchange, such common stock shall be treated as meeting such requirements. If common stock is received pursuant to such a reorganization partly in exchange for stock meeting the requirements of section 1244 stock determinable at the time of the exchange and partly in exchange for stock not meeting such requirements, the principles of paragraph (c) (2) of this section apply in determining the number of shares received which are treated as meeting the requirements of section 1244 stock and the basis of those shares.

(2) For purposes of paragraphs (1) (E) and (2) (A) of section 1244(c), a successor corporation in a reorganization described in section 368(a) (1) (F) shall be treated as the same corporation as its predecessor.

§ 1.1244(d)-4 Net operating loss deduction.

For purposes of section 172, relating to the net operating loss deduction, any amount of loss which is treated as an ordinary loss under section 1244 (taking into account the annual dollar limitation of that section) shall be treated as attributable to the trade or business of the taxpayer. Therefore, such loss is allowable in determining the taxpayer's net operating loss for a taxable year and is not subject to the application of section 172(d) (4), relating to nonbusiness deductions.

§ 1.1244(e) Statutory provisions; losses on small business stock; regulations.

Sec. 1244. Losses on small business stock. * * *

(e) Regulations. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

[Sec. 1244(e) as added by sec. 202(b), Small Business Tax Revision Act 1958 (72 Stat. 1676)]

§ 1.1244(e)-1 Records to be kept and information to be filed with the return.

(a) *By the corporation.* The plan to issue stock which qualifies under section 1244 must appear upon the records of the corporation. In addition, in order to substantiate an ordinary loss deduction claimed by its shareholders, the corporation should maintain records showing the following:

(1) The persons to whom stock was issued pursuant to the plan, the date of issuance to each, and a description of the amount and type of consideration received from each;

(2) If the consideration received is property, the basis in the hands of the shareholder and the fair market value of such property when received by the corporation;

(3) Which certificates represent stock issued pursuant to the plan;

(4) The amount of money and the basis in the hands of the corporation of other property received after June 30, 1958, and before the adoption of the plan for its stock, as a contribution to capital, and as paid-in surplus;

(5) The equity capital of the corporation on the date of adoption of the plan; and

(6) Information relating to any tax-free stock dividend made with respect to stock issued pursuant to the plan and any reorganization in which stock is transferred by the corporation in exchange for stock issued pursuant to the plan.

(b) *By the taxpayer.* Any person who claims a deduction for an ordinary loss on stock under section 1244 shall file with his income tax return for the year in which a deduction for the loss is claimed a statement setting forth:

(1) The address of the corporation that issued the stock;

(2) The manner in which the stock was acquired by such person and the nature and amount of the consideration paid; and

(3) If the stock was acquired in a non-taxable transaction in exchange for property other than money—the type of property, its fair market value on the date of transfer to the corporation, and its adjusted basis on such date.

In addition, a person who owns section 1244 stock in a corporation shall maintain records sufficient to distinguish such stock from any other stock he may own in the corporation.

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DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

[7 CFR Parts 723, 725, 727]

TOBACCO

Notice of Intention to Make Determinations With Respect to Marketing Quotas for 1960-61 Marketing Year

Cigar-filler tobacco, cigar-binder tobacco, and cigar-filler and binder tobacco; burley, flue-cured, fire-cured (type 21), fire-cured (types 22, 23 and 24), dark air-cured, and Virginia sun-cured tobacco; Maryland tobacco.

Pursuant to the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.; hereinafter referred to as the "Act"), the Secretary of Agriculture is preparing to (a) proclaim a national marketing quota for each of the three marketing years beginning October 1, 1960 for (1) Maryland tobacco, (2) cigar-binder (types 51 and 52) tobacco, and (3) cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco; (b) determine and announce the amount of the national marketing quota for the 1960-61 marketing year for each of such kinds of tobacco, and for burley tobacco, flue-cured tobacco, fire-cured (type 21) tobacco, fire-cured (types 22, 23 and 24) tobacco, dark air-cured tobacco, and Virginia sun-cured tobacco; (c) apportion the national marketing quota for the 1960-61 marketing year for each such kind of tobacco among the several States; and (d) convert the State marketing quotas for the 1960-61 marketing year into State acreage allotments.

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall, not later than December 1 of any marketing year with respect to flue-cured tobacco and not later than February 1 of any marketing year with respect to other kinds of tobacco, proclaim a national marketing quota for any kind of tobacco for each of the next three succeeding marketing years whenever he determines with respect to such kind of tobacco:

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefore;

(2) That such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers: *Provided*, That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he may prescribe, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Subsection 301(b) (15) (7 U.S.C. 1301(b) (15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23 and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54 and 55; and
Cigar-filler tobacco, comprising type 41.

Subsection 301(b) (15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of this Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a differ-

ence in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 F.R. 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports on the 1951 and subsequent crops of such tobacco. Pursuant to such authority, the Secretary has also determined (22 F.R. 367) that cigar-binder (types 51 and 52) tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports on the 1957 and subsequent crops of such tobacco.

The Act (7 U.S.C. 1313 (i)) provides that notwithstanding any other provisions of the Act, whenever after investigation the Secretary determines with respect to any kind of tobacco that a substantial difference exists in the usage or market outlets for any one or more of the types comprising such kind of tobacco and that the quantity of tobacco of such type or types to be produced under the marketing quotas and acreage allotments established pursuant to this section would not be sufficient to provide an adequate supply for estimated market demands and carryover requirements for such type or types of tobacco, the Secretary shall increase the marketing quotas and acreage allotments for farms producing such type or types of tobacco in the preceding year to the extent necessary to make available a supply of such type or types of tobacco adequate to meet such demands and carryover requirements. The increases in farm marketing quotas and acreage allotments shall be made on the basis of the production of such type or types of tobacco during the period of years considered in establishing farm marketing quotas and acreage allotments for such kind of tobacco. The additional production authorized by this subsection shall be in addition to the national marketing quota established for such kind of tobacco pursuant to section 312 (7 U.S.C. 1312) of the Act. The increase in acreage under this subsection shall not be considered in establishing future State or farm acreage allotments.

Subsection 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall also determine and announce, not later than the first day of December 1959 with respect to flue-cured tobacco and not later than the first day of February 1960 with respect to other kinds of tobacco, the amount of the national marketing quota which is in effect for the 1960-61 marketing year in terms of the total quantity of each kind of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Subsection 312(b) provides further that the amount of the 1960-61 national marketing quota may, not later than March 1, 1960, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carry-over at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1312(c)) requires that within 30 days after a national marketing quota is proclaimed for the 1960-61, 1961-62, and 1962-63 marketing years for (1) Maryland tobacco, (2) cigar-binder (types 51 and 52) tobacco, and (3) cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, the Secretary shall conduct a referendum of farmers who are engaged in the production of the 1959 crop of each such kind of tobacco to determine whether such farmers are in favor of or opposed to such quota for the next three succeeding marketing years. If more than one-third of the farmers voting in the referendum oppose such quota, such results shall be proclaimed by the Secretary and the national marketing quota so proclaimed shall not be in effect but such results shall in no wise affect or limit the subsequent proclamation and subsequent submission to a referendum, as otherwise provided in section 312 of the Act (7 U.S.C. 1312), of a national marketing quota. Maryland tobacco producers disapproved quotas for the three marketing years beginning October 1, 1959 (24 F.R. 2271). The 1959-60 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for cigar-binder (types 51 and 52) tobacco and for cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco (22 F.R. 367).

Burley, flue-cured, fire-cured, dark air-cured, and Virginia sun-cured tobacco growers favored marketing quotas being in effect for the 1960-61 marketing year in referenda held pursuant to the Act as follows: burley tobacco (24 F.R. 2271); flue-cured tobacco (24 F.R. 356); fire-cured (types 21, 22, 23 and 24) tobacco (23 F.R. 2072); dark air-cured (types 35 and 36) tobacco (23 F.R. 2072); and Virginia sun-cured tobacco (24 F.R. 2271). Growers of cigar-filler (type 41) tobacco disapproved quotas for the three

marketing years beginning October 1, 1959 (24 F.R. 2271), and unless growers of such kind of tobacco petition the Secretary in accordance with regulations (24 F.R. 2271) pursuant to paragraph (a) of section 312 of the Agricultural Adjustment Act of 1938, as amended, quotas will not be in effect on such kind of tobacco during such three marketing years.

The Act (7 U.S.C. 1313(a)) requires the Secretary to apportion the national marketing quota, less the amount to be allotted under subsection (c) of section 1313 for small farms and "new" farms, among the several States on the basis of the total production in each State during the five calendar years immediately preceding the calendar year in which the quota is proclaimed, with such adjustments as are determined to be necessary to make correction for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such five-year period.

The Act (7 U.S.C. 1313(g)) provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent year shall not be taken into account in establishing State and farm acreage allotments. Section 377 of the Act, as amended by Public Law 86-172, reads as follows:

In any case in which, during any year beginning with 1956, the acreage planted to a commodity on any farm is less than the acreage allotment for such farm, the entire acreage allotment for such farm (excluding any allotment released from the farm or reapportioned to the farm and any allotment provided for the farm pursuant to subsection (f) (A) of section 344) shall, except as provided herein, be considered for the purpose of establishing future State, county and farm acreage allotments to have been planted to such commodity in such year on such farm; but the 1956 acreage allotment of any commodity shall be regarded as planted under this section only if the owner or operator on such farm notified the county committee prior to the sixtieth day preceding the beginning of the marketing year for such commodity of his desire to preserve such allotment: *Provided*, That beginning with the 1960 crop, except for Federally-owned land, the current farm acreage allotment established for a commodity shall not be preserved as history acreage pursuant to the provisions of this section unless for the current year or either of the two preceding years an acreage equal to 75 per centum or more of the farm acreage allotment for such year was actually planted or devoted to the commodity on the farm (or was regarded as planted under provisions of the Soil Bank or the Great Plains Program): *Provided further*, That this section shall not be applicable in any case, within the period 1956 to 1959, in which the amount of the commodity required to be stored to postpone or avoid payment of penalty has been reduced because the allotment was not fully planted. Acreage history credits for released or reapportioned acreage shall be governed by the applicable provisions of this title pertaining to the release and reapportionment of acreage allotments.

The Soil Bank Act (7 U.S.C. 1801 et seq.) also provides that the acreage withdrawn or diverted from the production of tobacco under the acreage reserve program and conservation reserve

program shall for allotment purposes be considered devoted to the production of tobacco.

The Act (7 U.S.C. 1313 (g)) authorizes the Secretary to convert State marketing quotas into State acreage allotments on the basis of average yield per acre for the State during the five years last preceding the year in which the national marketing quota is proclaimed, adjusted for abnormal conditions of production.

In making the determinations of the amounts of the national marketing quotas, the apportionment of the quotas among the several States, the conversion of State marketing quotas into State acreage allotments and of the date(s) of the referenda with respect to Maryland tobacco, cigar-binder (types 51 and 52) tobacco, and cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, consideration will be given to any data, views and recommendations pertaining thereto, which are submitted in writing to the Director, Tobacco Division, Commodity Stabilization Service, United States Department of Agriculture, Washington, D.C. All submissions must be postmarked not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER in order to be considered.

Issued at Washington, D.C. this 5th day of October 1959.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-8535; Filed, Oct. 8, 1959;
8:51 a.m.]

[7 CFR Part 729]

PEANUTS

Notice of Intention to Establish Date for Referendum

As required by section 358(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358(b)), a referendum of farmers who were engaged in the production of the 1959 crop of peanuts will be held not later than December 15, 1959 to determine whether such farmers are in favor of or opposed to peanut marketing quotas for the crops of peanuts produced in the calendar years 1960, 1961, and 1962. It is the present intention to establish December 15, 1959 as the date on which the referendum will be held.

Before the date for the referendum is announced, consideration will be given to any data, views, and recommendations relating thereto which are submitted in writing to the Director, Oils and Peanut Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C. All submissions must be postmarked not later than 10 days from the date of publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C. this 5th day of October 1959.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-8534; Filed, Oct. 8, 1959;
8:51 a.m.]

[7 CFR Part 730]

RICE

Notice of Proposed Changes in Regulations for Determination of Acreage Allotments for 1959 and Subsequent Crops

Pursuant to the authority contained in the applicable provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301, 1352, 1353, 1354, 1377), the Secretary is preparing to amend the regulations for the establishment of producer and farm acreage allotments for the 1959 and subsequent crops of rice as amended (23 F.R. 8528; 24 F.R. 577, 1640, 2677).

The amendments under consideration will change for 1959 the method for determining credit for participating in the conservation reserve program of the soil bank as provided in an amendment (6b) to the Regulations Pertaining to Rice Marketing Quotas (24 F.R. 5623); and for 1960 and subsequent years will provide for the application of Public Law 86-172 relating to preservation of acreage history; change the language defining the term "engaged in the production of rice" so as to clearly provide the extent to which a producer must actually participate in or share in the cost of the production and harvest of the rice crop, as well as a share in a fixed portion of the crop at the time of harvest, if his producer allotment is to be allocated to the farm; and make other minor changes for the purpose of obtaining uniformity between the rice allotment regulations and other commodity allotment regulations.

Prior to the issuance of these amendments, data, views, or recommendations pertaining thereto submitted to the Director, Grain Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C., will be given consideration, provided that such submissions are postmarked not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Issued this 5th day of October 1959.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 59-8532; Filed, Oct. 8, 1959;
8:51 a.m.]

[7 CFR Part 815]

ALLOTMENT OF 1960 DIRECT-CONSUMPTION PORTION OF MAINLAND SUGAR QUOTA FOR PUERTO RICO

Notice of Hearing

Pursuant to the authority contained in the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter called the "act", and in accordance with the applicable rules of practice and procedure (7 CFR 801.1 et seq.), and on the basis of information before me, I do hereby find that the allotment of the direct-consumption portion of the 1960

mainland quota for Puerto Rico is necessary to prevent disorderly marketing and importation of such sugar and to afford all interested persons an equitable opportunity to market such sugar in the continental United States, and hereby give notice that a public hearing will be held at Santurce, Puerto Rico, in the Conference Room, Caribbean Area Office, ASC, Segarra Building on November 5, 1959, at 10:00 a.m.

The findings made above are in the nature of preliminary findings based on the best information now available. The quantity of direct-consumption sugar which will be permitted to be brought into the continental United States within the 1960 quota is still unknown. However, the capacity of Puerto Rican refineries to produce direct-consumption sugar far exceeds the quantity of such sugar which may be marketed in the continental United States and for local consumption in Puerto Rico within probable 1960 quotas. Under such circumstances it is imperative that provision be made for the allotment of the direct-consumption portion of the mainland quota to avoid disorderly marketing and to afford all interested persons an equitable opportunity to market direct-consumption sugar in the continental United States.

It will be appropriate to present evidence at the hearing on the basis of which the Secretary of Agriculture may affirm, modify, or revoke such preliminary findings and make or withhold allotment of the direct-consumption portion of the mainland quota in accordance therewith.

The purpose of such hearing is to receive evidence to enable the Secretary of Agriculture to make fair, efficient, and equitable allotments of the direct-consumption portion of the 1960 mainland quota among persons who produce or refine and market direct-consumption sugar to be brought into the continental United States for consumption therein.

In addition, the subject and issues of this hearing also include (1) the manner in which the statutory factors of "processings from proportionate shares," "past marketings," and "ability to market," as provided in section 205(a) of the said act, should be measured; and (2) the relative weightings which should be given to these factors.

Notice also is given hereby that it will be appropriate at the hearing to present evidence on the basis of which the Secretary may revise or amend the allotment of the direct-consumption portion of the mainland quota for the purposes of (1) allotting any increase, or decrease in the direct-consumption portion of the mainland quota; (2) allotting any deficit in the allotment for any allottee, and (3) substituting revised estimates of data or final actual data for estimates of such data wherever estimates are used in the formulation of an allotment of this portion of the quota.

Issued this 6th day of October 1959.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 59-8533; Filed, Oct. 8, 1959;
8:51 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of the Secretary

[AA 643.3]

RAYON STAPLE FIBER FROM
BELGIUMDetermination of No Sales at Less
Than Fair Value

OCTOBER 2, 1959.

A complaint was received that rayon staple fiber from Belgium was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that rayon staple fiber from Belgium is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The rayon staple fiber from Belgium is purchased outright by the United States importer in arms-length negotiations. The quantity of rayon staple fiber, the same as or similar to the rayon staple fiber sold to the United States, sold for home consumption was adequate to form a basis for a fair value comparison. It was accordingly determined that the proper fair value comparison is between purchase price and home market price.

It was further determined that purchase price was not less than home market price. In arriving at the home market price for the purpose of the fair value comparison, due allowance was made for differences in quantity, for differences in inland freight costs, and for other differences in circumstances of sale.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-8523; Filed, Oct. 8, 1959;
8:50 a.m.]

[AA 643.3]

RAYON STAPLE FIBER FROM
FRANCEDetermination of Sales at Less Than
Fair Value

OCTOBER 2, 1959.

A complaint was received that rayon staple fiber from France was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that rayon staple fiber from France is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

The United States Tariff Commission is being advised of this determination.

Statement of reasons. It was determined that as to all rayon staple fiber from France entered prior to January 1, 1959, the proper fair value comparison is between exporter's sales price and the home market price because of the relationship between the person who handled the exports and the person by whom the merchandise was imported into the United States (Antidumping Act, 1921, as amended, section 207; 19 U.S.C. 166). Subsequent thereto the importer dealt directly with the producer, with whom the importer was not related, and purchase price became the appropriate basis for a fair value comparison.

It was further determined that the exporter's sales price of the rayon staple fiber entered prior to January 1, 1959, was lower than the home market price. In arriving at the home market price for the purpose of the fair value comparison, due allowance was made for quantity, for the difference between the moisture regain of the fiber sold in the home market and the moisture regain of the fiber sold for exportation to the United States, and for differences in circumstances of sale due to inland freight differentials and to costs, arising by reason of a governmental decree, incurred by the manufacturer in connection with home market sales.

The purchase price of the rayon staple fiber purchased after January 1, 1959, was found not to be lower than the home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-8524; Filed, Oct. 8, 1959;
8:50 a.m.]

[AA 643.3]

RAYON STAPLE FIBER FROM WEST
GERMANYDetermination of No Sales at Less
Than Fair Value

OCTOBER 2, 1958.

A complaint was received that rayon staple fiber from West Germany was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that rayon staple fiber from West Germany is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The rayon staple fiber from West Germany is purchased outright by the United States

importers in arms-length transactions. The quantity of rayon staple fiber, the same as or similar to the rayon staple fiber sold to the United States, sold for home consumption was adequate to form a basis for a fair value comparison. It was accordingly determined that the proper fair value comparison is between purchase price and home market price.

It was further determined that purchase price was not less than home market price. In arriving at the home market price for the purpose of the fair value comparison, due allowance was made for differences in quantity, for differences in packing costs which were higher for the product exported to the United States, and for differences in inland freight costs and in other circumstances of sale.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-8525; Filed, Oct. 8, 1959;
8:51 a.m.]

[AA 643.3]

RAYON STAPLE FIBER FROM ITALY

Determination of No Sales at Less
Than Fair Value

OCTOBER 2, 1959.

A complaint was received that rayon staple fiber from Italy was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that rayon staple fiber from Italy is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. The rayon staple fiber from Italy is purchased outright by the United States importer in arms-length negotiations. The quantity of rayon staple fiber, the same as or similar to the rayon staple fiber sold to the United States, sold for home consumption was adequate to form a basis for a fair value comparison. It was accordingly determined that the proper fair value comparison is between purchase price and home market price.

It was further determined that purchase price was not less than home market price. In arriving at the home market price for the purpose of the fair value comparison, due allowance was made for differences in quantity, for differences in inland freight costs, and for other differences in circumstances of sale.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidump-

ing Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-8526; Filed, Oct. 8, 1959;
8:51 a.m.]

[AA 643.3]

POLYVINYL CHLORIDE RESIN FROM JAPAN

Determination of No Sales at Less Than Fair Value

OCTOBER 2, 1959.

A complaint was received that polyvinyl chloride resin from Japan was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that polyvinyl chloride resin from Japan is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. Purchase price and exporter's sales price, as applicable, were compared to home market price for fair value purposes. Adjustments were made in the home market price for inland freight and for interest costs arising from extension of credit. In the case of one manufacturer, allowance was also made for a sales discount. After making such adjustments, it was found that neither the purchase price nor the exporter's sales price was lower than the home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 59-8528; Filed, Oct. 8, 1959;
8:51 a.m.]

[1959 Dept. Circular 1031]

5 PERCENT TREASURY NOTES OF SERIES B-1964

Offering of Notes

OCTOBER 6, 1959.

I. Offering of notes. 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites subscriptions, at par and accrued interest, from the people of the United States for notes of the United States, designated 5 percent Treasury Notes of Series B-1964. The amount of the offering under this circular is \$2,000,000,000, or thereabouts. In addition to the amount offered for public subscription, the Secretary of the Treasury reserves the right to allot up to \$100,000,000 of these notes to Government Investment Accounts. The books will be open only on October 6, 1959, for the receipt of subscriptions for this issue.

No. 198—6

II. Description of notes. 1. The notes will be dated October 15, 1959, and will bear interest from that date at the rate of 5 percent per annum, payable on a semiannual basis on February 15 and August 15, 1960, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1964, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, \$1,000,000, \$100,000,000, and \$500,000,000. The notes will not be issued in registered form.

5. The notes will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States notes.

III. Subscription and allotment. 1. Subscriptions will be received at the Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit subscriptions for accounts of customers, but only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies. Others than commercial banks will not be permitted to enter subscriptions except for their own account. Subscriptions from commercial banks for their own account will be received without deposit, but will be restricted in each case to an amount not exceeding 50 percent of the combined capital, surplus and undivided profits, of the subscribing bank. Subscriptions from States, political subdivisions or instrumentalities thereof, and public pension and retirement and other public funds also will be received without deposit. Subscriptions from all others must be accompanied by payment of 10 percent of the amount of notes applied for, not subject to withdrawal until after allotment. All subscriptions up to a maximum of \$25,000 will be allotted in full if accompanied by 100 percent payment at the time of entering the subscriptions. Following allotment, any portion of the 10 percent payment in excess of 10 percent of the amount of notes allotted may be released upon the request of the subscribers.

2. All subscribers are required to agree not to purchase or to sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue, until after midnight October 6, 1959.

3. Commercial banks in submitting subscriptions will be required to certify that they have no beneficial interest in any of the subscriptions they enter for the account of their customers, and that their customers have no beneficial interest in the banks' subscriptions for their own account.

4. The Secretary of the Treasury reserves the right to reject or reduce any subscription, to allot less than the amount of notes applied for, and to make different percentage allotments to various classes of subscribers; and any action he may take in these respects shall be final. The basis of the allotment will be publicly announced, and allotment notices will be sent out promptly upon allotment.

IV. Payment. 1. Payment at par and accrued interest, if any, for notes allotted hereunder must be made or completed on or before October 15, 1959, or on later allotment. In every case where payment is not so completed, the payment with application up to 10 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. Any qualified depository will be permitted to make payment by credit in its Treasury Tax and Loan Account for notes allotted to it for itself and its customers up to any amount for which it shall be qualified in excess of existing deposits when so notified by the Federal Reserve Bank of its District.

V. General provisions. 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective Districts, to issue allotment notices, to receive payment for notes allotted, to make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] ROBERT B. ANDERSON,
Secretary of the Treasury.

[F.R. Doc. 59-8527; Filed, Oct. 8, 1959;
8:51 a.m.]

DEPARTMENT OF THE INTERIOR

National Park Service

SEQUOIA NATIONAL PARK AND SEQUOIA NATIONAL GAME REFUGE

Exclusion and Addition of Certain Lands

By virtue of authority contained in the act of August 14, 1958 (72 Stat. 604), and with approval of the Acting Secretary of Agriculture, the lands hereinafter described are hereby ordered excluded from the Sequoia National Park and

thereafter included in the Sequoia National Game Refuge, within Sequoia National Forest, effective date of this publication:

Beginning at E $\frac{1}{4}$ corner of Section 12, Township 17 South, Range 30 East, Mount Diablo Meridian, thence N 0°15' E along the township line for a distance of 401.0 feet to the point of beginning for the tract herein-after described.

Thence N 0°15' E 910.0 feet to a point; thence N 89°45' W 450.0 feet to a point; thence S 0°15' W 910.0 feet to a point; thence S 89°45' E 450.0 feet to the point of beginning, containing 9.401 acres, more or less.

Dated this 2d day of October 1959.

ELMER F. BENNETT,
Acting Secretary of the Interior.

OCTOBER 2, 1959.

[F.R. Doc. 59-8506; Filed, Oct. 8, 1959;
8:48 a.m.]

Office of the Secretary

[69279]

ARIZONA

Notice of Hearing on Opening of Certain Lands Within Tucson Mountain Park, Arizona, to Location and Entry Under the United States Mining Laws

Notice is hereby given that a public hearing will be held beginning at 10:00 a.m. on Tuesday, December 8, 1959, in the Pioneer Hotel, Tucson, Arizona. The purpose of the hearing is to afford the public an opportunity to more fully express its views in connection with the opening of the following-described lands within Tucson Mountain Park, Arizona, to location and entry under the United States mining laws, effective February 15, 1960, as contemplated in amendatory Public Land Order No. 1983 of September 21, 1959, appearing in the FEDERAL REGISTER issue of September 25, 1959, at page 7727:

GILA AND SALT RIVER MERIDIAN

- T. 13 S., R. 11 E.,
Sec. 25, S $\frac{1}{2}$;
Sec. 26, SE $\frac{1}{4}$.
T. 13 S., R. 12 E.,
Sec. 6;
Sec. 7, E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 8;
Sec. 17;
Sec. 18, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
Secs. 19 and 20;
Sec. 29;
Sec. 30, NE $\frac{1}{4}$ and S $\frac{1}{2}$;
Sec. 31.
T. 14 S., R. 12 E.,
Sec. 5, N $\frac{1}{2}$;
Sec. 6, NE $\frac{1}{4}$;
Sec. 20, S $\frac{1}{2}$;
Sec. 21, S $\frac{1}{2}$.

The areas described aggregate 7,600 acres.

Those who desire to be heard in person at the hearing, should file notice thereof not later than November 30, 1959, with the State Supervisor, Bureau of Land Management, 1305 North Central Avenue (P.O. Box 148), Phoenix, Arizona. Written statements may be filed with

that official at any time to and including the date of the hearing.

ELMER F. BENNETT,
Acting Secretary of the Interior.

OCTOBER 2, 1959.

[F.R. Doc. 59-8507; Filed, Oct. 8, 1959;
8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-120]

AEROJET-GENERAL NUCLEONICS

Notice of Withdrawal of Application for Utilization Facility License

Please take notice that by letter dated September 21, 1959, Aerojet-General Nucleonics of San Ramon, California, has withdrawn its application dated September 24, 1958, for a license authorizing construction and operation of a nuclear reactor designated by the applicant as the Aerojet Nuclear Testing Reactor. Notice of the filing of this application was published in the FEDERAL REGISTER on November 21, 1958, 23 F.R. 9077.

Dated at Germantown, Md., this 5th day of October 1959.

For the Atomic Energy Commission.

R. L. KIRK,
Acting Director, Division of
Licensing and Regulation.

[F.R. Doc. 59-8484; Filed, Oct. 8, 1959;
8:45 a.m.]

HARPER ENGINEERING CO.

Order Respecting Motion To Designate Real Party in Interest and To Dismiss

In the matter of Harper Engineering Company; dispute and appeal in reference to decision of subcontract No. 92, Docket No. 92.

On September 24, 1959, the Regents of the University of California filed a motion in the above designated proceeding upon the grounds: (1) That the real party in interest in this proceeding be designated in view of the pending of bankruptcy proceedings, and if no person can be so determined, then that this proceeding be dismissed, and (2) that this proceeding be dismissed for the reason that this case has not proceeded and has not been prosecuted in accordance with the stipulations reached on February 25, 1959 respecting the form and amount of evidence to be adduced by Harper Engineering Company.

Upon the basis of the foregoing motion and the record to date in this proceeding, *It is ordered*, That answers, if any, to this motion be filed with the Hearing Examiner, U.S. Atomic Energy Commission, Washington 25, D.C. on or before November 2, 1959 and a reply may be filed by the Regents to the said answers on or before November 16, 1959 after which a determination will be made of the motion upon the basis of the fore-

going submittals without a hearing, unless the parties so request.

Issued: October 2, 1959, Germantown, Md.

SAMUEL W. JENSCH,
Hearing Examiner.

[F.R. Doc. 59-8485; Filed, Oct. 8, 1959;
8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13062; FCC 59M-1295]

CHE BROADCASTING CO. (NSL)

Order Continuing Hearing

In re application of Che Broadcasting Company (NSL), Albuquerque, New Mexico, Docket No. 13062, File No. BP-11842; for construction permit.

On the oral request of counsel for the Broadcast Bureau, and with the consent of the applicant: *It is ordered*, This 2d day of October 1959, that the hearing now scheduled for October 13 is continued to Friday, October 30, 1959, at 10 a.m., in the offices of the Commission, Washington, D.C.

Released: October 5, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-8517; Filed, Oct. 8, 1959;
8:50 a.m.]

[Docket No. 13217]

CARL F. BERGSTROM

Order To Show Cause

In the matter of Carl F. Bergstrom, 720 South Second Street, Jacksonville Beach, Florida, Docket No. 13217; order to show cause why there should not be revoked the license for Radio Station WD-3752 aboard the vessel "Cee Bee." There being under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.61 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows:

Section 8.367(a)(2)—Failure to provide the captioned ship station with a copy of Part 8 of the Commission's Rules.

Section 8.368(a)—Failure to maintain an accurate radiotelephone station log.

It further appearing, that, the above-named licensee received said official notice but did not make satisfactory reply thereto, whereupon the Commission, by letter dated July 7, 1959, and sent by Certified Mail, Return Receipt Requested (No. 121590), brought this matter to the attention of the licensee and requested that such licensee respond to the Commission's letter within fifteen days from the date of its receipt stating the measures which had been taken, or were being taken, in order to bring the

operation of the radio station into compliance with the Commission's rules, and warning the licensee that his failure to respond to such letter might result in the institution of proceedings for the revocation of the radio station license; and

It further appearing, that receipt of the Commission's letter was acknowledged by the signature of the licensee's agent, Leo S. Woodard, on July 8, 1959, to a Post Office Department return receipt; and

It further appearing, that, although more than fifteen days have elapsed since the licensee's receipt of the Commission's letter, reply thereto has not been made in accordance with § 1.61 of the Commission's rules; and

It further appearing, that, in view of the foregoing, the licensee has willfully violated § 1.61 of the Commission's rules;

It is ordered, This 6th day of October, 1959, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and section 0.291(b) (8) of the Commission's statement of delegations of authority, that the said licensee show cause why the license for the above-captioned Radio Station should not be revoked and appear and give evidence in respect thereto at a hearing¹ to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by Certified Mail, Return Receipt Requested to the said licensee.

Released: October 6, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-8518; Filed, Oct. 8, 1959;
8:50 a.m.]

¹Section 1.62 of the Commission's rules provides that a licensee, in order to avail himself of the opportunity to be heard, shall, in person or by his attorney, file with the Commission, within thirty days of the receipt of the order to show cause, a written statement stating that he will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., he should advise the Commission of the reasons for such inability within five days of the receipt of this order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the order to show cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the order to show cause, the allegations of fact contained in the order to show cause will be deemed as correct and the sanctions specified in the order to show cause will be invoked.

[Docket Nos. 13203-13209; FCC 59-1012]

H AND R ELECTRONICS, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of H and R Electronics, Inc., Greenville, North Carolina, Requests: 1550 kc, 1 kw, Day, Docket No. 13203, File No. BP-11635; Harry A. Epperson, Sr., Winston-Salem, North Carolina, Requests: 1550 kc, 5 kw, Day, Docket No. 13204, File No. BP-12482; Francis M. Fitzgerald, Greensboro, North Carolina, Requests: 1550 kc, 1 kw, DA, Day, Docket No. 13205, File No. BP-12566; Wilbur B. Reisenweaver, tr/as Reisenweaver-Communications, Winston-Salem, North Carolina, Requests: 1550 kc, 1 kw, Day, Docket No. 13206, File No. BP-12641; North Carolina Electronics, Inc., Raleigh, North Carolina, Requests: 1550 kc, 5 kw, D, Docket No. 13207, File No. BP-12769; James Poston and Frank P. Larson, Jr., d/b as Poston-Larson Broadcasting Company, Graham, North Carolina, Requests: 1550 kc, 500 w, Day, Docket No. 13208, File No. BP-13094; Wyti, Incorporated, Vinton, Virginia, Requests: 1550 kc, 1 kw, Day, Docket No. 13209, File No. BP-13117; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of September 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal with the exception of the Poston-Larson Broadcasting Company (BP-13094) which may not be financially qualified, since one proposed loan of \$25,000 must be repaid within a year and another loan of \$15,000 is not directed to the applicant partnership entity nor does it show the terms of repayment and security; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated July 23, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring a hearing on the particular issues hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing, that, after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.

3. To determine whether the instant proposal of H and R Electronics, Inc., would involve objectionable interference with the operation of Station WBOF, Virginia Beach, Virginia, authorized by Order (FCC 59-887) of the Commission on September 2, 1959 (Docket No. 12394, File No. BP-11600), or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the instant proposal of Harry A. Epperson, Sr. (BP-12482) would involve objectionable interference with Station WBSC, Bennettsville, South Carolina or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of North Carolina Electronics, Inc. (BP-12769) would involve objectionable interference with Station WBSC, Bennettsville, South Carolina, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether the interference received from any of the other proposals herein and any existing stations would affect more than ten percent of the population within the normally protected primary service area of any one of the instant proposals in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

7. To determine whether Poston-Larson Broadcasting Company is financial-

ly qualified to construct and operate its proposed station.

8. To determine whether the antenna system proposed by Poston-Larson Broadcasting Company (BP-13094) would constitute a hazard to air navigation.

9. To determine whether the instant proposal of H and R Electronics, Inc. (BP-11635) would provide the coverage of the city sought to be served, as required by § 3.188(b)(1) of the Commission rules.

10. To determine whether the proposed antenna system of Harry A. Epperson, Sr. (BP-12482) would be reasonably free of deleterious cross-modulation and reradiation effects with nearby structures.

11. To determine what effects, if any, the presence of a transmission line in the vicinity of the proposed antenna system of Poston-Larson Broadcasting Company (BP-13094) will have on the radiation characteristics of the said antenna system.

12. To determine, more precisely, the street address location of the proposed transmitter site of Harry A. Epperson, Sr. (BP-12482).

13. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

14. To determine, in the event it is concluded pursuant to the foregoing issue that one of the proposals for Winston-Salem, North Carolina, should be favored, which of the proposals of Harry A. Epperson, Sr., or Wilbur B. Reisenweaver tr/as Reisenweaver-Communications, would better serve the public interest, convenience and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the said applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed standard broadcast station.

(b) The proposal of each with respect to the management and operation of the proposed station.

(c) The programming services proposed in each of the said applications.

15. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That Virginia Beach Broadcasting Corporation and Atlantic Coast Life Insurance Company, licensees of Stations WBOF and WBSC, respectively, are made parties to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and pre-

sent evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: October 6, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-8519; Filed, Oct. 8, 1959;
8:50 a.m.]

[Docket Nos. 13213, 13214; FCC 59-1015]

MOUNT WILSON FM BROADCAST- ERS, INC. (KBCA) AND FREDDOT, LTD. (KIT)

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Mount Wilson FM Broadcasters, Inc., (KBCA), Los Angeles, California, Has: 105.1 Mc, No. 286; 6 kw; 2,900 ft., Req: 105.1 Mc, No. 286; 51.414 kw; 2,898.9 ft., Docket No. 13213, File No. BPH-2705; Freddot, Ltd. (KIT), San Diego, California, Has: 105.3 Mc, No. 287; 56 kw; 180 ft., Req: 105.3 Mc, No. 287; 59.5 kw; 2,065 ft., Docket No. 13214, File No. BMPH-5593; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of September 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing, that except as indicated by the issues specified below, the instant applicants are legally, technically, financially, and otherwise qualified to construct and operate the instant proposals; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 2, 1959, and incorporated herein by reference, notified the applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the applicants' replies to the aforementioned letter have not entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring a hearing on the particular issues herein-after specified; and

It further appearing, that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below:

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose service within the 1 mv/m and 50 uv/m contours from the proposed operations of Stations KBCA and KIT and the availability of other such FM service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing FM broadcast stations, the areas and populations affected thereby, and the availability of other FM service to areas and populations involved in the interference between the proposals.

3. To determine whether the proposal of KBCA would involve objectionable interference with Station KLFM, Long Beach, California, and, if so, the nature and extent thereof, the areas and populations affected thereby and the availability of other service to such areas and populations.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the light of the evidence adduced, pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

It is further ordered, That the Long Beach FM Broadcasting Co., permittee of Station KLFM, Long Beach, California, is made a party to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.140 of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals

set forth in the application will be effectuated.

Released: October 6, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-8520; Filed, Oct. 8, 1959;
8:50 a.m.]

[Docket Nos. 13210-13212; FCC 59-1013]

FRANK A. TAYLOR ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Frank A. Taylor, Haines City, Florida, Requests: 1400 kc, 100 w, U, Docket No. 13210, File No. BP-11884; Zephyr Broadcasting Corp., Zephyrhills, Florida, Requests: 1400 kc, 250 w, U, Docket No. 13211, File No. BP-12291; Myron A. Reck (WTRR), Sanford, Florida, Has: 1400 kc, 250 w, U, Requests: 1400 kc, 250 w, 1 kw-L5, U, Docket No. 13212, File No. BP-12900; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of September 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, the instant applicants are legally, technically, financially, and otherwise qualified to construct and operate their respective proposals; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 19, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring a hearing on the particular issues hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing, that, after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposals of Zephyr Broadcasting Corp. and Frank A. Taylor and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WTRR and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in the interference between the proposals.

4. To determine whether the proposal of Zephyr Broadcasting Corp. would involve objectionable interference with Station WLCY (formerly WTSP), St. Petersburg, Florida, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the interference received by the proposed operations of Frank A. Taylor and the Zephyr Broadcasting Corp. from any of the proposals herein and any existing stations would affect more than ten percent of the population within the respective normally protected primary service areas in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That WTSP, Inc., licensee of Station WLCY (formerly WTSP), St. Petersburg, Florida, is made a party to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own

motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: October 6, 1959.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-8521; Filed, Oct. 8, 1959;
8:50 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

MEMBER LINES OF U.S. ATLANTIC AND GULF-VENEZUELA AND NETHERLANDS ANTILLES CONFERENCE

Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 6190-15, between the member lines of the U.S. Atlantic and Gulf-Venezuela and Netherlands Antilles Conference, modifies the rules and regulations of the basic agreement of that conference (No. 6190, as amended), which covers the trade between U.S. Atlantic and Gulf ports and ports in Venezuela and in the Islands of Curacao, Aruba and Bonaire, Netherlands Antilles. The purpose of the modification is to provide that, except in cases when considering a modification of the conference agreement, which requires the affirmative vote of all members, a quorum for any meeting shall consist of all members entitled to vote, less one, if the membership is no more than five lines, or all members entitled to vote less two, if the membership is six or more lines. The rules and regulations presently provide that a quorum in all cases, except in considering a modification of the conference agreement, shall consist of all members, less one.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: October 5, 1959.

By order of the Federal Maritime Board,

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 59-8472; Filed, Oct. 8, 1959;
8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. 19535-19540]

CALIFORNIA CO. ET AL.

Order for Hearings and Suspending Proposed Changes in Rates¹

OCTOBER 1, 1959.

In the matters of The California Company, Docket No. G-19535; The Atlantic Refining Company, Docket No. G-19536; The Atlantic Refining Company (Operator), et al., Docket No. G-19537; Sohio Petroleum Company, Docket No. G-19538; William Graham Oil Company (Operator), et al., Docket No. G-19539; Austral Oil Company, Inc., Agent for Oil Participations, Inc., Docket No. G-19540.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser	Notice of change dated—	Date tendered	Effective date ¹ unless suspended	Date suspended until ²
G-19535	The California Co.	4	# 13	Tennessee Gas Transmission Co.	8-27-59	9-1-59	11-1-59	4-1-60
G-19536	The Atlantic Refining Co.	63	# 10	United Fuel Gas Co.	9-1-59	9-2-59	11-1-59	4-1-60
		166	# 8	United Fuel Gas Co.	9-1-59	9-2-59	11-1-59	4-1-60
		1	# 9	Texas Eastern Transmission Corp.	9-1-59	9-2-59	11-1-59	4-1-60
G-19537	The Atlantic Refining Co. (operator), et al.	141	# 12	do	9-1-59	9-2-59	11-1-59	4-1-60
		136	# 5	do	9-1-59	9-2-59	11-1-59	4-1-60
		181	# 6	do	9-1-59	9-2-59	11-1-59	4-1-60
		142	# 19	do	9-1-59	9-2-59	11-1-59	4-1-60
		187	# 4	do	9-1-59	9-2-59	11-1-59	4-1-60
G-19538	Sohio Petroleum Co.	60	2	Tennessee Gas Transmission Co.	8-31-59	9-2-59	11-1-59	4-1-60
G-19539	William Graham Oil Co. (operator), et al.	8	(7)	Colorado Interstate Gas Co.	# 6-29-59	9-3-59	10-4-59	3-4-60
		8	# 1	Colorado Interstate Gas Co.	9-2-59	9-3-59	10-4-59	3-4-60
G-19540	Austral Oil Co., Inc., agent for Oil Participations, Inc.	5	3	El Paso Natural Gas Co.	9-2-59	9-4-59	10-5-59	3-5-60

¹ The stated effective dates are those requested by Respondents, or the first day after the expiration of statutory notice, whichever is later.

² And until such further time as each is made effective in the manner prescribed by the Natural Gas Act.

³ Rate effective subject to refund in Docket No. G-15837.

⁴ Rate effective subject to refund in Docket No. G-16518.

⁵ Rate effective subject to refund in Docket No. G-16648.

⁶ Rate effective subject to refund in Docket No. G-16647.

⁷ Supersedes William Graham Oil Company (operator), et al., FPC Gas Rate Schedule No. 6, as amended.

⁸ Contract.

The California Company (California) and Sohio Petroleum Company (Sohio), in support of their proposed redetermined rate increases, cite the contract provisions and submit copies of buyer's redetermination letter. California also states that the contract was negotiated at arm's length, the proposed price is just and reasonable, and below price levels at which new reserves are being committed in the area. California further states that without provisions assuring that it would receive the going market price established by supply and demand under competitive conditions, it would not have committed its gas to Tennessee Gas Transmission Company. Sohio offers no additional support for its increase other than reference to the contract provisions and buyer's redetermination letter.³

The Atlantic Refining Company and The Atlantic Refining Company (Operator), et al., in support of their proposed periodic rate increases, state that the contracts resulted from arm's-length bargaining, schedules of periodic price escalations are common in long-term contracts and are economically desirable to both buyer and seller in providing a low price during the period when buyer's unamortized capital investment is high, and enable seller to receive progressively

higher returns contemporaneously with increases in costs. The Atlantic Refining Company for gas sold to United Fuel Gas Company also cites higher initial rates in the area.

William Graham Oil Company (Operator), et al. (Graham), in support of its proposed renegotiated contract and its proposed rate increase, states that the new contract provisions will be beneficial to buyer in helping to attain uniformity in its Hugoton contracts and simplification of administration, accounting, and operational problems. Graham states additionally that the new contract provides for Btu adjustments on a well basis rather than a contract basis, contains no minimum take or pay requirement based upon 100% of the allowable or annual minimums, and contains a fixed schedule of prices until 1974. Graham also states that the proposed pricing provisions are reasonable, the proposed price is reasonable and not more than the current price, and is warranted in view of the benefits to the buyer.

Austral Oil Company, Inc., Agent for Oil Participations, Inc. (Austral), in support of its proposed favored-nation rate increase, cites the favored-nation provisions of the contract, and states that the contract was negotiated at arm's length, the proposed rate is just and reasonable, and contracts have recently been negotiated for gas in the area at rates as high or higher than the proposed rate. Austral also cites the rate of Texas Gulf Producing Company⁴ for gas sold

⁴ Texas Gulf Producing Company's rate is in effect subject to refund in Docket No. G-16537.

to El Paso Natural Gas Company in this area.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated rate schedule and supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Chapter I), public hearings be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated rate schedules and supplements.

(B) Pending hearings and decision thereon, Supplement No. 13 to California's FPC Gas Rate Schedule No. 4 is hereby suspended and the use thereof deferred until April 1, 1960; Supplement Nos. 10, 8, 9, and 12 to The Atlantic Refining Company's FPC Gas Rate Schedule Nos. 63, 166, 1, and 141, respectively, are hereby suspended and the use thereof deferred until April 1, 1960; Supplement Nos. 5, 6, 19, and 4 to The Atlantic Refining Company's (Operator), et al., FPC Gas Rate Schedule Nos. 136, 181, 142, and 187, respectively, are hereby suspended and the use thereof deferred until April 1, 1960; Supplement No. 2 to Sohio's FPC Gas Rate Schedule No. 50 is hereby suspended and the use thereof deferred until April 1, 1960; Graham's FPC Gas Rate Schedule No. 8 and Supplement No. 1 thereto is hereby suspended and the use thereof deferred until March 4, 1960; Supplement No. 3 to Austral's FPC Gas Rate Schedule No. 5 is hereby suspended and the use thereof deferred until March 5, 1960; each of the aforementioned rate schedules and supplements shall remain suspended until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the rate schedule nor supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission (Commissioner Kline dissenting on the suspension of the rates provided for in Docket No. G-19539, William Graham Oil Company (Operator), et al.).

JOSEPH H. GUTRIE,
Secretary.

[F.R. Doc. 59-9490; Filed, Oct. 8, 1959; 8:46 a.m.]

¹ This order does not provide for the consolidation for hearing or disposition of the separately docketed matters covered herein, nor should it be so construed.

² Sohio's application for a certificate of public convenience and necessity under section 7 of the Natural Gas Act authorizing its subject sale is now pending before the Commission.

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3824]

NEW JERSEY POWER & LIGHT CO.

Notice of Proposed Issuance and Sale of Short-Term Notes to Banks

OCTOBER 2, 1959.

Notice is hereby given that New Jersey Power & Light Company ("New Jersey"), a public-utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act") and has designated sections 6 and 7 of the Act as applicable to the proposed transactions which are summarized as follows:

New Jersey proposes that from time to time, but not later than December 31, 1960, it will issue and sell to The Chase Manhattan Bank its unsecured promissory notes bearing interest at the prime commercial rate in New York City at the date of their issue and maturing ten months thereafter. The aggregate principal amount of such notes outstanding at any one time will not exceed \$6,000,000, nor at the date of issue of each such note will the aggregate of all securities evidencing New Jersey's unsecured indebtedness exceed 10 percent of the aggregate of its secured indebtedness and capital stock and surplus. The notes may be prepaid at any time in whole or in part without penalty.

New Jersey proposes that the proceeds of the notes will be applied to the cost of its post-1958 construction program and/or to the reimbursement of its treasury for expenditures made therefrom for that purpose. It is anticipated that the notes will be paid or prepaid out of New Jersey's next permanent financing, the exact timing and nature of which cannot now be determined.

It is estimated that expenses incident to the proposed transactions will not exceed \$1,500.

Notice is further given that any interested person may, note later than October 19, 1959, at 5:30 p.m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for

such request and the issues of fact or law raised by said filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act or take such other action as it may deem appropriate.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 59-8508; Filed, Oct. 8, 1959; 8:49 a.m.]

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority 368]

SECRETARY OF DEFENSE

Delegation of Authority To Represent Interests of Federal Government in Application of Pacific Gas and Electric Co. for Increase in Rates

1. Pursuant to the provisions of sections 201(a)(4) and 205 (d) and (e) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authority to represent the interests of the executive agencies of the Federal Government in the matter of Application of Pacific Gas and Electric Company for Increase in Gas Rates, Application No. 40926, before the California Public Utilities Commission, is hereby delegated to the Secretary of Defense.

2. The Secretary of Defense is hereby authorized to redelegate any of the authority contained herein to any officer, official or employee of the Department of Defense.

3. The authority conferred herein shall be exercised in accordance with the policies, procedures and controls prescribed by the General Services Ad-

ministration, and shall further be exercised in cooperation with the responsible officers, officials and employees of General Services Administration.

4. This delegation of authority shall be effective April 13, 1959.

FRANKLIN FLOETE,
Administrator.

OCTOBER 2, 1959.

[F.R. Doc. 59-8510; Filed, Oct. 8, 1959; 8:49 a.m.]

[Delegation of Authority 369]

SECRETARY OF DEFENSE

Delegation of Authority to Represent Interests of Federal Government in Petition of Merrimack-Essex Electric Co. for Construction of Transmission Line

1. Pursuant to the provisions of sections 201(a)(4) and 205 (d) and (e) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, authority to represent the interests of the executive agencies of the Federal Government in the matter of the Petition of Merrimack-Essex Electric Company for Construction of Transmission Line—D.P.U. 12544, before the Department of Public Utilities of the Commonwealth of Massachusetts, is hereby delegated to the Secretary of Defense.

2. The Secretary of Defense is hereby authorized to redelegate any of the authority contained herein to any officer, official or employee of the Department of Defense.

3. The authority conferred herein shall be exercised in accordance with the policies, procedures and controls prescribed by the General Services Administration, and shall further be exercised in cooperation with the responsible officers, officials and employees of General Services Administration.

4. This delegation of authority shall be effective March 11, 1959.

FRANKLIN FLOETE,
Administrator.

OCTOBER 2, 1959.

[F.R. Doc. 59-8511; Filed, Oct. 8, 1959; 8:49 a.m.]

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